BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

TDS Metrocom Petition for Arbitration of Interconnection Terms, Conditions, and Prices from Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin	05-MA-123

ARBITRATION AWARD

Proceedings

On November 7, 2000, TDS Metrocom, Inc. (TDS), filed a Petition for Arbitration of an interconnection agreement with Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)(Ameritech), pursuant to 47 U.S.C. § 252(b)(1) [1] and the Commission's interim procedures.[2] The parties have stipulated that the date on which Ameritech received a request for negotiation of an interconnection agreement from TDS, for purposes of § 252, was June 1, 2000. Ameritech filed its response to the TDS petition on December 5, 2000.

On November 20, 2000, TDS filed a motion to appoint an outside arbitrator to hear this matter. On January 1, 2001, the Public Service Commission of Wisconsin (PSCW or Commission) denied the TDS motion and appointed a three member panel (Panel) to consider this petition: Dennis Klaila (Panel Chair), Duane Wilson and Chela O'Connor. The Panel

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[1] Hereafter, simple references to § 251, § 252 and other sections without a title reference shall mean sections of Title 47 of the United States Code. Similarly, references to a Rule shall mean the corresponding section of Title 47 of the Code of Federal Regulations.

[2] Interim Procedures, Investigation of the Implementation of the Telecommunications Act of 1996 in Wisconsin, docket 05-TI-140, May 23, 1996.

conducted an evidentiary hearing on January 30-31, 2001. The parties filed initial briefs on February 14, 2001, and reply briefs on February 21, 2001.

Parties

TDS Metrocom, Inc., is a Wisconsin corporation with its principal place of business in Madison, Wisconsin. TDS is an alternative telecommunications utility under WIS. STAT. §§ 196.01(1d)(f), authorized to resell on a statewide basis telecommunications services that have been authorized for resale, and authorized to provide facilities based intrastate local exchange and exchange access service in the service areas of Wisconsin Bell, Inc., and Verizon North Inc. *See* Application of TDS Datacom, Inc., for Certification as a Competitive Local Exchange Carrier and Alternative Telecommunications Utility, Findings of Fact, Conclusions of Law, Interim Order and Certificate, PSCW docket 5845-NC-100 (Feb. 25, 1997). Under federal law, TDS is a telecommunications carrier for purposes of § 153(49) and a requesting telecommunications carrier for purposes of §§ 251(c)(1) and 252(a).

Ameritech is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin. Under Wisconsin law, Ameritech is a telecommunications utility, as defined in WIS. STAT. § 196.01(10), engaged in rendering various local exchange, carrier access, and intraLATA toll services over approximately 2 million access lines in Wisconsin. Under federal law, Ameritech is a telecommunications carrier for purposes of § 153(49), a Bell Operating Company for purposes of § 153(35), and an Incumbent Local Exchange Carrier for purposes of § 251(h). On October 8, 1999, SBC Communications Inc. (SBC) merged with Ameritech Corporation. As a result, all of the former Ameritech operating companies, including Wisconsin Bell, Inc., are now subsidiaries of SBC.

Issues

The parties submitted an initial list of 224 disputed issues, numbered TDS-1 through TDS-220 and AIT-1 through AIT-4. On February 9, 2001, the parties filed a joint statement of the unresolved issues to be considered in the arbitration. That joint statement reported that the parties had resolved the following issues: TDS 2, 5-7, 9-10, 12-14, 16, 18, 21-24, 26, 29, 42-57, 60-61, 63, 67, 82-83, 87, 97, 99, 104-106, 108, 110, 113-118, 120-122, 128, 131-139, 141-143, 145-148, 150-152, 154, 161-162, 164-166, 169-175, 178, 181-182, 184-189, 191-195, 198-200, 202-205, 207-211, 213-214, 216, and AIT 1-3.

Conclusions of Law

1. The Petition for Arbitration filed by TDS Metrocom, Inc., was timely filed pursuant to 47 U.S.C. § 252(b)(1).

2. It has jurisdiction under WIS. STAT. §§ 196.02, 196.04, 196.199(2)(a), 196.219(2m), (3)(a) and (4)(a), WIS. ADMIN. CODE ch. PSC 160, and 47 U.S.C. §§ 251, 252, 253(b), and 261(b) and (c) to issue the following arbitration award.

Opinion

Standard for Arbitration

Section 252(c) specifies the standard that a state commission shall employ when conducting an arbitration under the Telecommunications Act (Act):

> In resolving by arbitration under [§ 252(b)] any open issues and imposing conditions upon the parties to the agreement, a State commission shall–

> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications Commission] pursuant to section 251;
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> (2) establish any rates for interconnection, services, or network elements according to [§ 252(d)]; and
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> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

47 U.S.C. § 252(c). Under § 252(d), this Panel shall determine that any rates, terms and conditions that it prescribes in this proceeding comply with the requirements of §§ 251(b) and (c).

This Panel also has discretion, within its delegated authority under WIS. STAT. §§ 196.02, 196.04, 196.199(2)(a), 196.219(2m), (3)(a) and (4)(a), and WIS. ADMIN. CODE ch. PSC 160, to impose additional requirements pursuant to §§ 252(e)(3), 253(b), 261(b) and 261(c), provided such requirements do not conflict with valid federal regulation of the same subject matter. Section 252(e)(3) provides:

> (3) Preservation of authority. Notwithstanding paragraph (2), but subject to section 253 [47 U.S.C. § 253], nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

Section 253(b) provides:

> (b) State regulatory authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [47 U.S.C. § 254], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Section 261(b) and (c) provide:

> (b) Existing State regulations. Nothing in this part [47 U.S.C. §§ 251 et seq.] shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], or from prescribing regulations after such date of

> enactment, in fulfilling the requirements of this part [47 U.S.C. §§ 251 et seq.], if such regulations are not inconsistent with the provisions of this part [47 U.S.C. §§ 251 et seq.].
>
> (c) Additional State requirements. Nothing in this part [47 U.S.C. §§ 251 et seq.] precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part [47 U.S.C. §§ 251 et seq.] or the Commission's regulations to implement this part [47 U.S.C. §§ 251 et seq.].

Status of governing law

On July 8, 2000, the Eighth Circuit issued its third decision on the subject of the rules adopted by the FCC in its *Local Competition* docket. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000) (*IUB III*), *cert. granted*, 121 S.Ct. 878, 148 L.Ed.2d 788 (U.S. Jan. 22, 2001) (No. 00-590). In *IUB III*, the Eighth Circuit vacated in total Rules 51.303, 51.305(a)(4), 51.311(c), 51.315(c)-(f), 51.317, 51.405(a), (c) and (d), 51.505(b)(1), 51.513, 51.609, 51.611, and 51.707.

On September 22, 2000, the Eighth Circuit stayed its order vacating Rule 51.505(b)(1), pending the filing and disposition of a petition for writ of certiorari. *Iowa Utils. Bd. v. FCC*, No. 96-3321 (8th Cir. Sept. 22, 2000) (order granting stay). On January 22, 2001, the Supreme Court granted a petition for writ of certiorari to review the Eighth Circuit's decision in *IUB III*.

Status of Concurrent Proceedings

A. Docket 05-TI-283.

In docket 05-TI-283, the PSCW investigated alternative methods for pricing dial-up access for Internet traffic. This docket established a methodology that carriers and arbitration

panels now apply in negotiation and arbitration of individual interconnection agreements to set a rate for reciprocal compensation.

The PSCW issued its order in this docket on November 8, 2000. Petitions for judicial review are pending in state and federal court.

B. Docket 6720-TI-160.

In docket 6720-TI-160, the PSCW is investigating Ameritech Wisconsin's operational support systems (OSS). Phase I of the investigation focuses on the development of OSS performance measures and benchmarks, and how OSS testing should proceed. Phase II will conduct OSS performance testing, based on the performance measures, benchmarks and research methodology adopted in Phase I.

On October 2, 2000, the temporary Administrative Law Judge (ALJ) in that proceeding issued a report on the status of that docket. Second Report of Temporary Administrative Law Judge, Investigation Into Ameritech Wisconsin Operational Support Systems, docket 6720-TI-160 (October 2, 2000). He reported that several issues were resolved through the prehearing conferences held since the PSCW issued its July 19, 2000 order in this proceeding. The ALJ recommended that the Commission issue a further order regarding the resolved issues. Specifically, he recommended that the further order include the following:

1. Resolved OSS enhancements and process improvements, set forth in Attachment D to the Report, and resolved portions of unresolved issues set forth in Attachment E.

2. Resolved Performance Measures, (including business rules, change management process, and 6-month review), set forth in Attachments F and G to the Report.

On December 1, 2000, Ameritech and the Competitive Local Exchange Carriers (CLECs) participating in the hearings in this proceeding filed a Joint Motion for the issuance of an order resolving a number of issues. The PSCW issued an interlocutory order on December 15, 2000, accepting in large part the parties' proposed resolution of several disputed issues.

C. Docket 6720-TI-161.

In docket 6720-TI-161, the PSCW is investigating Ameritech Wisconsin's provision of unbundled network elements (UNEs). A hearing in this docket was held in Madison from February 26 to March 8, 2001.

Discussion of Issues

Issue TDS-1: What procedures should apply for termination of the agreement?

(General Terms and Conditions, Section 5.2)

A. Position of the parties.

Ameritech contends that its proposed language allows either party to cure any breach within 45 days of notice of such breach of the agreement which would lead to the termination of the agreement. TDS argues that in order to protect the end users from disconnection, termination of the agreement should only occur with an order from the Commission.

B. Decision.

Neither party suggests that any statute or rule governs this issue. This issue is within the Panel's discretionary authority under 47 U.S.C. §§ 251, 252, 253(b) and 261(b) and (c). TDS objects to Ameritech's proposed language requires Commission approval for termination of the agreement because termination would "likely cause irretrievable and irreparable harm to TDS in its ability to compete for customers in the marketplace." (Jackson Direct Testimony, Tr. Vol.

1, p. 455 and TDS brief at 14). Further, TDS argues that Ameritech's language places a burden on the accused party to protect itself against termination and that end-users should be protected from termination of the agreement by requiring a Commission order. (Jackson Direct at Tr. Vol. 1, p. 457 and TDS brief at 14) Finally, TDS argues that allowing Ameritech to assume TDS customers upon termination of the agreement is anti-competitive because it does not allow end-users an opportunity to select their carrier. (Jackson Direct at Tr. Vol. 1, pp. 457-458).

Ameritech objects to TDS' proposed language requiring Commission involvement and adds language providing that either party must cure any breach or obtain an order prohibiting the termination of the agreement from the Commission within 45 days of notice of the breach. Ameritech argues that the language it proposes allows either party to avoid termination through cure or Commission intervention. Further, Ameritech argues, that requiring Commission intervention as a matter of course, forces Ameritech to continue services to a CLEC who has breached the agreement or has failed to pay its bills until the Commission orders that Ameritech may terminate the agreement, putting Ameritech at an economic disadvantage. (Ameritech brief at 3).

This Panel should be reluctant to insert the influence of the Commission into the competitive relationship of the parties. Either party under Ameritech's proposed language has the power to invoke the Commission's intervention when a threat to competition exists or appears to exist. Further, under Wis. Stat. 196.199 either party may ask the Commission to intervene when a controversy exists as to compliance with the terms of the agreement. Creating a requirement that the Commission involve itself in the termination of an agreement pre-supposes anti-competitive conditions surrounding termination before such an accusation is made.

TDS claims that termination without Commission intervention will cause irretrievable and irreparable harm to TDS. It is not the Commission's nor this Panel's responsibility to protect CLECs or any carrier from "harm in [their] ability to compete for customers in the marketplace." In a competitive market the termination of an agreement should take place where a competitor is unwilling and/or unable to efficiently compete in the market. Requiring the Commission to approve all terminations regardless of circumstance places an artificial and arguably anti-competitive impediment to the efficient operation of the market. This Panel's responsibility is to prevent anti-competitive terms and conditions that may lead to harm. TDS has not demonstrated that the language proposed by Ameritech establishes such anti-competitive terms and conditions.

TDS further argues that end-users should be protected from disconnections resulting from the termination of the agreement. TDS suggests that Ameritech would assume TDS customers in that case and only Commission intervention will prevent this disconnection and assumption. TDS neglects the fact that end-users that may be affected are TDS customers and TDS is responsible for notifying its customers of impending disconnections according to its terms of service and any applicable law.

This Panel awards the language proposed by Ameritech for section 5.2 with language added that prevents termination in the event that there is an ongoing dispute regarding the term(s) and/or condition(s) that are subject of the breach as follows:

> *Notwithstanding any other provision of this Agreement, either Party (the "Terminating Party") may terminate this Agreement and the provision of any Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided pursuant to this Agreement in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party (i) fails to cure such nonperformance or breach*

within forty-five (45) calendar days after receiving written notice thereof pursuant to this Section 5.2. (ii) has not commenced a dispute regarding the subject of the breach pursuant to sec. 16.2.1 within same forty-five (45) calendar days; and (iii) fails to obtain and provide to the Terminating Party within that same forty-five (45) calendar days an Order by the Commission prohibiting or delaying such termination. Any termination pursuant to this section 5.2 shall take effect immediately upon delivery of written notice by the Terminating Party to the other Party that it is effecting termination pursuant to this Section 5.2 and that conditions (i) and (ii) above pertain.

Issue TDS-3: What terms should govern limitation of liability?

(General Terms and Conditions, Section 9.1 et seq.)

A. Position of the parties.

Ameritech proposes language that requires TDS to indemnify Ameritech against claims that arise from TDS' end-users or third parties.

TDS argues that the language proposed by Ameritech circumvents the basic provisions of liability already provided for in the agreement. Further, TDS argues that Ameritech's provisions require TDS to protect Ameritech from its own negligence. TDS also argues that the limits of liability proposed by Ameritech are not mutual and Ameritech is attempting to disclaim liability for directory errors in direct conflict to the resolution in docket 6720-TI-160. Finally, TDS argues that Ameritech is not legally able to limit liability to end-users because they are not parties to the agreement.

B. Decision.

Ameritech has failed to demonstrate that the indemnity provisions already agreed to by both parties are insufficient and why TDS should be required to indemnify Ameritech from its own negligence. Ameritech is also aware that its tariff filings are not subject to review. WIS.

STAT. 196.193(3). Ameritech is able to unilaterally adopt and enforce terms and conditions of its service offerings through tariff filings.

The Panel directs the parties to strike the language proposed by Ameritech in sections 9.1.3, 9.1.5, 9.1.6, and 9.1.7.

Issue TDS-4: What terms should govern intellectual property?

(General Terms and Conditions, Article 12)

A. Position of the parties.

Ameritech proposes language that requires TDS to indemnify Ameritech against claims that arise from TDS end-user's or third parties' alleged infringements of intellectual property rights or from violations committed by TDS.

TDS argues that the language proposed by Ameritech is in violation of the decision cited in the agreed upon language of this section, Memorandum Opinion and Order, *In the Matter of Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-use Agreements Before Purchasing Unbundled Elements,* CCB Pol. No. 97-4; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, 15 F.C.C.R. 13896 (Apr. 27, 2000). TDS argues that the decision requires Ameritech, on behalf of the CLEC, to make its best efforts to obtain intellectual property rights on terms and conditions that are equal to those Ameritech has obtained. TDS also argues that the costs of those rights should be equally spread among the CLECs.

B. Decision.

Both parties agree that Ameritech must make its best effort to obtain intellectual property rights on behalf of the CLEC. However, TDS assumes that this extends to the defense of those rights after acquisition. Nowhere in the MCI decision or in the Act is there a requirement that an ILEC provide indemnification after it has fulfilled its obligations in using its best efforts to obtain intellectual rights on behalf of the CLEC. This Panel will not extend that obligation under this agreement.

The Panel awards the language proposed by Ameritech in section 12 of General Terms and Conditions.

Issue TDS-8: Billing and payment of rates and charges.

(General Terms and Conditions, Section 15.1)

A. Position of the parties.

Ameritech contends that the language TDS proposes requires it to provide a special service to TDS that it currently provides as a courtesy and will require Ameritech to provide to all CLECs if it is ordered. Further, Ameritech contends that if the TDS' language is proposed, TDS should be required to pay for such service including any change in format, program or system that will allow Ameritech to provide this service.

TDS contends that Ameritech has provided and continues to provide billing in a reconcilable format (.txt) to TDS and that it is unreasonable for Ameritech to provide a bill format that does not allow TDS to reconcile its accounts electronically. TDS language provides that the format be in spreadsheet, .txt, or other database format.

B. Decision.

The language proposed by TDS does not specify the format required of Ameritech, but allows a choice that will provide TDS with an electronically reconcilable format. Ameritech argues that the .pdf format currently provided is acceptable and to require another format is unreasonable.

Ameritech undoubtedly has a reconcilable format available to itself to perform various reconciliation, evaluation and forecast functions. Ameritech has only recently begun to provide a non-reconcilable format to its reseller customers forcing them to reconcile their billings by hand a requirement to which Ameritech is not subject. In fact, Ameritech continues to provide a reconcilable format to TDS without additional charge.

Ameritech's request to require TDS to pay for a format change or to obtain or create a program or system to handle this request does not appear to follow from the testimony at hearing. Suggesting that a new system or program needs to be developed is untrue and appears to be an attempt to create a financial disincentive for TDS to pursue this issue.

Finally, TDS proposes language that prohibits Ameritech from providing a .pdf format. This language is not necessary because .pdf format does not fit the description in TDS' proposed language and it also requires Ameritech to eliminate .pdf format from any billing it may seek to provide to any carrier opting into the agreement and requesting .pdf format.

The language proposed by TDS is just, reasonable, and nondiscriminatory. The Panel awards the language for section 15.1 of General Terms and Conditions, as proposed by TDS but with the removal of the last sentence as follows:

> *Unless otherwise stated, each Party will render monthly bill(s) to the other for Interconnection, Resale Services, Network Elements, functions, facilities, products*

and services provided hereunder at the rates set forth in the applicable Appendix Pricing, as set forth in applicable tariffs or other documents specifically referenced herein and, as applicable, as agreed upon by the Parties or authorized by a Party. SBC will provide bills in a Spreadsheet, .txt or agreed database format such that the data thereon can be processed electronically by CLEC.

Issue TDS-11: Should the parties be required to pay disputed amounts into escrow?

(General Terms and Conditions, Sections 15.4 – 15.7, 16.3.1)

A. Position of the parties.

Ameritech argues that the language it proposes is fair and reflects the language found in most interconnection agreements and in Ameritech's tariff. Ameritech further argues that it is required to pay disputed amounts related to reciprocal compensation into escrow.

TDS argues that a requirement that any CLEC pay disputed amounts into escrow is economically burdensome for CLECs and potentially anti-competitive.

B. Decision.

It is clear that requiring disputed amounts be placed in escrow is a standard practice in this industry. Ameritech's tariff requires this, most interconnection agreements make provision for this, and TDS has not demonstrated that this requirement is anti-competitive. While TDS suggests that an ILEC will have an incentive to inflate a CLEC's bills to make it economically burdensome to a CLEC, TDS has not illustrated or demonstrated that Ameritech has made a practice of such conduct.

Ameritech's proposed language, however, goes beyond simply requiring payment of disputed amounts into escrow. Ameritech proposes language that would nullify any dispute if amounts disputed were not proven to be in escrow at the time of filing the dispute. Finally, Ameritech proposes that if a party does not have the required documentation establishing

payment of disputed amounts into escrow, that party may lose all rights to dispute the subject amounts.

Ameritech already has the remedy it seeks in its ability to terminate this agreement or services to a CLEC if the CLEC fails to comply with the provisions of the escrow section. The additional remedies, nullification of the dispute and irrevocable loss of the right to dispute charges, act as a premature determination that the dispute is invalid. These remedies also do not take into consideration the possible lag time between filing a dispute and an agent's ability to establish an escrow account nor does it take into consideration the CLEC's potential inability to timely escrow funds, such as may occur in a bankruptcy proceeding. In such cases it is unreasonable and arguably anti-competitive to strip a CLEC of its right to dispute charges by Ameritech.

For these reasons, this Panel awards the language proposed by Ameritech in sec. 15.4-15.7 and sec. 16.3.1 with language removed consistent with the Panel's determination above as follows:

> *15.4. If any portion of an amount due to a Party (the* ***"Billing Party"****) for Resale Services or Network Elements under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the* ***"Non-Paying Party"****) shall, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes* ***("Disputed Amounts")*** *and include in such written notice the specific details and reasons for disputing each item listed in Section 16.3.4. The Non-Paying Party shall pay when due (i) all undisputed amounts to the Billing Party, and (ii) all Disputed Amounts into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties. To be acceptable, the Third Party escrow agent must meet all of the following criteria:*
> *15.4.1. The financial institution proposed as the Third Party escrow agent must be located within the continental United States;*
> *15.4.2. The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and*

15.4.3. The financial institution proposed as the Third Party escrow agent must be authorized to handle Automatic Clearing House (ACH) (credit transactions) (electronic funds) transfers.
15.4.4. In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree that the escrow account will meet all of the following criteria:
15.4.4.1. The escrow account must be an interest bearing account;
15.4.4.2. All charges associated with opening and maintaining the escrow account will be borne by the disputing Party;
15.4.4.3. That none of the funds deposited into the escrow account or the interest earned thereon may be subjected to the financial institution's charges for serving as the Third Party escrow agent;
15.4.4.4. All interest earned on deposits to the escrow account shall be disbursed to the Parties in the same proportion as the principal; and
15.4.4.5. Disbursements from the escrow account shall be limited to those:
15.4.4.5.1. authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or
15.4.4.5.2. made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 16.6.1 or
15.4.4.5.3. made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 16.6.1.
15.5. Disputed Amounts in escrow shall be subject to Late Payment Charges as set forth in Section 15.1.
15.6. Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 16.
15.7. If the Non-Paying Party disputes any charges for Resale Services or Network Elements and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties shall cooperate to ensure that all of the following actions are taken:
15.7.1. the Billing Party shall credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after the resolution of the Dispute;
15.7.2. within fifteen (15) calendar days after resolution of the Dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party shall be released to the Non-Paying Party, together with any accrued interest thereon;
15.7.3. within fifteen (15) calendar days after resolution of the Dispute, the portion of the Disputed Amounts resolved in favor of the Billing Party shall be released to the Billing Party, together with any accrued interest thereon; and
15.7.4. no later than the third Bill Due Date after the resolution of the dispute regarding the Disputed Amounts, the Non-Paying Party shall pay the Billing Party the difference between the amount of accrued interest such Billing Party received from the escrow disbursement and the amount of Late Payment Charges such Billing Party is entitled to receive pursuant to Section.

And;

*16.3.1. If the written notice given pursuant to Section 15.4 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 16.3.1 shall be used and the dispute shall first be referred to the appropriate service center [**SBC-AMERITECH** Service Center; for resolution. In order to resolve a billing dispute, CLEC shall furnish **AMERITECH-WISCONSIN** written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount.*

Issue TDS-15: What procedures should apply for termination of services to TDS?

(General Terms and Conditions, Sections 17.1 et seq.)

A. Position of the parties.

Both Ameritech and TDS agree that this issue is essentially the same as Issue TDS-1 above.

B. Decision.

The disputed language under this issue is the language in sec. 17. TDS objects to Ameritech's proposed language and wishes to add language to require Commission approval for termination of services to TDS. TDS also, argues that allowing Ameritech to assume TDS customers upon termination of the agreement is anti-competitive because it does not allow end-users an opportunity to select their carrier. Ameritech also proposes language similar to language proposed in sec. 16.1.3 regarding the payment of disputed amounts into escrow. The Panel also chooses a compromise time of thirty (30) calendar days for disconnection of services to TDS upon notification.

This Panel reiterates its finding under issue 1 regarding the termination of the agreement. The Panel also finds it unnecessary and arguably anti-competitive to permit Ameritech's

language allowing it to assume TDS' customers upon termination of services to TDS. The Panel further reiterates that a CLEC is responsible for informing its customers of an impending disconnection. The Panel awards the following language consistent with its findings above and with the findings under issues, 1 and 11:

> ***17. Termination of Service to TDS***
>
> *17.1. Unless otherwise specified therein, Sections 17.1, 17.2, 17.3, 17.4 and 17.5 shall apply to all charges billed for all services Interconnection, Resale Services, Network Elements, functions, facilities, products and services furnished under this Agreement. Section 17.6 shall apply only to Resale Services and Network Elements furnished under this Agreement.*
> *17.2 Failure of TDS to pay charges or by the due date provide reasonably specific notice of any disputed charges, (Unpaid Charges), may be grounds for disconnection of Interconnection, Resale Services, network Elements, functions, facilities, products and services furnished under this Agreement. If TDS fails to pay by the Bill Due Date, any and all charges billed to them under this Agreement, including any Late Payment Charges or miscellaneous charges **("Unpaid Charges"),** and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party shall notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the applicable Interconnection, Resale Services, Network Elements, functions, facilities, products and services furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party.*
> *17.3. Intentionally Omitted.*
> *17.4. Disputes hereunder will be resolved in accordance with the Dispute Resolution Procedures set out in Section 16 of this Agreement.*
> *17.5. If any TDS charges remain unpaid at the conclusion of the time period as set forth in Section 15.1.1 above (30 calendar days from the due date of such unpaid charges), SBC/AMERITECH will notify TDS, the appropriate commission(s) and the end user's IXC(s) of Record in writing, that unless all charges are paid within thirty (30) calendar days, TDS's service may be disconnected and TDS's end users may be switched another provider's local service as directed by the commission. SBC/AMERITECH-may also suspend order acceptance at this time.*
> *17.6. SBC/AMERITECH may discontinue service to TDS upon failure to pay undisputed charges only as provided in this section, and will have no liability to TDS in the event of such disconnection.*
> *17.7. After disconnect procedures have begun, SBC/AMERITECH will not accept service orders from TDS until all unpaid, undisputed charges are paid. SBC/AMERITECH will have the right to require a deposit equal to one month's charges (based on the highest previous month of service from SBC/AMERITECH) prior to resuming service to TDS after disconnect for nonpayment.*

17.8. Beyond the specifically set out limitations in this section, nothing herein will be interpreted to obligate SBC/AMERITECH to continue to provide service to any such end users or to limit any and all disconnection rights SBC/AMERITECH may have with regard to such end users.
17.9. If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party shall take all of the following actions not later than fourteen (14) calendar days following receipt of the Billing Party's notice of Unpaid Charges:
17.9.1. notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ***("Disputed Amounts")*** *and the specific details listed in Section 16.3.4 of this Agreement, together with the reasons for its dispute; and*
17.9.2. immediately pay to the Billing Party all undisputed Unpaid Charges; and
17.9.3. pay all Disputed Amounts relating to Resale Services and Network Elements into an interest bearing escrow account that complies with the requirements set forth in Section 15.4.
[Section 17.9.4 is deleted.]
17.10. Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 16.
17.11. ***SBC-AMERITECH only***
17.11.1. Notwithstanding anything to the contrary herein, if the Non-Paying Party fails to (i) pay any undisputed amounts by the Bill Due Date, (ii) pay the disputed portion of a past due bill into an interest-bearing escrow account with a Third Party escrow agent, (iii) pay any revised deposit or (iv) make a payment in accordance with the terms of any mutually agreed upon payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for failing to comply with the foregoing. If the Non-Paying Party does not satisfy the written demand within five (5) Business Days of receipt, the Billing Party may exercise any, or all, of the following options:
17.11.2. assess a late payment charge and where appropriate, a dishonored check charge;
17.11.3. require provision of a deposit or increase an existing deposit pursuant to a revised deposit request;
17.11.4. refuse to accept new, or complete pending, orders; and/or
17.11.5. discontinue service.
17.11.6. Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of the above options:
17.11.7. shall not delay or relieve the Non-Paying Party's obligation to pay allcharges on each and every invoice on or before the applicable Bill Due Date, and
17.11.8. Sections 17.11.4 and 17.11.5 shall exclude any affected order or service from any applicable performance interval or Performance Benchmark
17.11.9. Once disconnection has occurred, additional charges may apply.

Issue TDS-17: Should the agreement contain language that Ameritech is not entering into this agreement voluntarily, and attempting to limit Ameritech's responsibilities on that basis?

(GTC, Section 26)

A. Position of the parties.

Ameritech argues that it wants this provision in order to keep track of the involuntary terms in each arbitration internally and to supply a "useful preview" of Ameritech's positions on the issues to other carriers. TDS argues that this provision does not affect anything within the agreement or condition 43 Merger Order and should not be included.

B. Decision.

The parties agree that the inclusion of this language has no affect on the agreement or the Merger Order. Ameritech and TDS each have a list of the issues in dispute at the time of this arbitration that may be used to internally keep track of involuntary terms. An arbitrated agreement is not the place in which parties should seeks to address administrative matters that do not affect the agreement or the other party. In the interest of keeping this agreement relevant to the issues within its four corners, the Panel directs the parties to delete the proposed Section 26 of General Terms and Conditions in its entirety.

Issue TDS-19: Where the agreement incorporates by reference an Ameritech Wisconsin tariff, would Ameritech Wisconsin be prohibited from revising that tariff?

(GTC, Section 38 et seq.)

A. Position of the parties.

TDS proposes the following language for Section 38 of the General Terms and Conditions:

38.2 SBC/AMERITECH will not, of its own volition, file a tariff or make another similar filing which supersedes this Agreement in whole or in part. SBC/AMERITECH will make no filings which are inconsistent with this commitment. This Section is not intended to apply to any SBC/AMERITECH tariffs or filings which do not affect TDS' rights or SBC/AMERITECH's obligations to TDS under this Agreement. This Section does not impair SBC/AMERITECH's right to file tariffs nor does it impair SBC/AMERITECH's right to file tariffs proposing new products and services and changes in the prices, terms and conditions of existing products and services, including discontinuance or grandfathering of existing features or services, of any telecommunications services that SBC/AMERITECH provides or hereafter provides to TDS under this Agreement pursuant to the provision of Appendix: Resale, nor does it impair TDS' right to contest such tariffs before the appropriate Commission.

38.3 SBC/AMERITECH will provide TDS prior notice of any tariff or filing which concerns the subject matter of this Agreement at the time a Preliminary Rate Authority (PRA) is transmitted to the state commission, or, in situations where a PRA would not be issued, within ninety (90) days (forty five (45) days for price changes) of prior to the expected effective date of the tariff or filing.

38.4 In the event that SBC/AMERITECH is required by any governmental authority to file a tariff or make another similar filing in connection with the performance of any action that would otherwise be governed by this Agreement, SBC/AMERITECH will provide TDS notice of the same as set forth in Section 38.3 above.

38.5 If any tariff referred to in Section 38.4 becomes ineffective by operation of law, through deregulation or otherwise, the terms and conditions of such tariffs, as of the date on which the tariffs became ineffective, will be deemed incorporated if not inconsistent with this Agreement.

Ameritech objects to portions of 38.2 and 38.3. Ameritech proposes that the first sentence of 38.2 be recast so that the sentence simply provides that no tariff filing will supersede any provision in the agreement. Ameritech would delete the second sentence of 38.2 as unnecessary. Ameritech first recommends that the notice provision in 38.3 should be taken up in a generic proceeding. Ameritech also recommends that, if the Panel is inclined to award 38.3, then the notice requirement should be limited to revisions to tariff provisions referenced in the Agreement. Ameritech also asserts that the proposed notice period is unreasonably long. Two weeks prior notice is sufficient.

Ameritech objects to 38.4 and 38.5 in their entirety. Ameritech argues that these provisions are unworkable and confused.

B. Decision.

This issue concerns several references in the interconnection agreement to tariffs Ameritech has filed with the PSCW and FCC. An Ameritech witness testified that some interconnection services have to have common terms and conditions and must be administered in a similar way for everybody. The witness argued that, in incorporating tariffs governing such services into the interconnection agreement by reference, the tariffs establish a fair and nondiscriminatory source for terms and conditions that would apply to both CLEC and Ameritech alike.

This issue was discussed in the arbitration award for the recent U.S. Cellular/Ameritech arbitration. There, the U.S. Cellular Panel ruled that, while incorporating some aspects of Ameritech's intrastate tariff by reference offers some benefit, in the form of convenience and simplicity, giving one party the privilege of changing the terms of this agreement unilaterally seems unfair. Ameritech may be correct that this interconnection agreement may create some administrative difficulties for the company. But that is true of the Telecommunications Act generally, and in any case is not a sufficient reason to permit unilateral revision of the terms of this agreement. *See* Arbitration Award, Petition for Arbitration to Establish an Interconnection Agreement Between United States Cellular and SBC Communications/Ameritech Wisconsin, PSCW docket 05-MA-120, pp. 40-41 (Aug. 24, 2000).

The concern with references to filed tariffs is that Ameritech can unilaterally revise a tariff, and thus modify a material term or provision of this interconnection agreement, without

effective notice of the amendment. In Wisconsin, customers have little opportunity to challenge proposed tariff revisions. *See* WIS. STAT. § 196.196(3). In most instances, customers learn of the changes to the tariff after the fact.

The Panel awards the contract language proposed by TDS for sections 38.2 and 38.3, as modified by Ameritech. The text of 38.2 addresses the Panel's concern that a tariff amendment filed unilaterally cannot modify or supersede a material term or condition of the Agreement. Section 38.3 provides sufficient notice so that TDS can inform its customers of changes in its service. This of particular importance when the referenced tariff defines a resold service. The notice requirement of 38.3 need only apply to tariff provisions referenced by the agreement. For all other tariff revisions, Ameritech need only comply with the statutory requirements.

The Panel decides not to adopt the proposed sections 38.4 and 38.5. The notice required in 38.3 includes revisions to referenced tariffs that are required by statute or regulation. The Panel agrees that section 38.5 is unworkable and unnecessary.

Issue TDS-20: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS?

(GTC, Section 50.1)

A. Position of the parties.

The parties agree to the following language in section 50.1 of the General Terms and Conditions of the interconnection agreement:

> Unless the context shall otherwise specifically require, and subject to Section 21, whenever any provision of this Agreement refers to a technical reference, technical publication, any publication of telecommunications industry

> administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, or publication of industry standards.

TDS proposes to append the following sentence to the end of the agreed upon text:

> To the extent such reference document is an internal publication of SBC-13STATE, such document will only be modified by agreement of the parties, or through a formal change management process.

Ameritech objects to the additional sentence TDS has proposed. Ameritech argues that this sentence would require Ameritech to obtain the consent of TDS, or engage in the change management process, before modifying its technical publications or other internal documents. Ameritech asserts that this would be both unnecessary and time consuming.

B. Decision.

In the AT&T arbitration, the AT&T Panel sought to strike a balance between two competing policy recommendations, each of which has some merit. The AT&T Panel noted that, on the one hand, it is not desirable to create a situation in which Ameritech can unilaterally revise a material term or condition of the Agreement by simply changing a referenced document over which it exercises total control. On the other hand, it is not reasonable to require Ameritech to seek permission from each CLEC it does business with before it performs upgrades and other improvements to its network. Consensus on a proposed upgrade may be impossible to obtain. In any event, it would give a CLEC disproportionate leverage over Ameritech's network planning. *See* Additional Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and*

TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), PSCW docket 05-MA-120 at pp. 54-55 (Feb. 27, 2001).

The question for the Panel is whether the first or second category of concerns is more important when considering whether to permit the application of revisions to Ameritech publications referenced in the Agreement. There is no testimony regarding the extent to which the change management process would delay the revision of internal documents. On the other hand, there is no information in the record to indicate Ameritech has revised its publications to the detriment of TDS and other CLECs. In fact, the TDS witness acknowledged that similar language in the prior TDS/Ameritech interconnection agreement has not been misused.

On balance, the Panel finds that it is beneficial to permit Ameritech to revise its publications, and apply those revisions on a going forward basis. It is difficult to see how Ameritech could or why it would want to manipulate its publications to undermine a term or condition of this Agreement. In the absence of such a showing, it is reasonable to permit Ameritech to upgrade and improve its network facilities and services without unnecessary additional negotiation or other process.

Issue TDS-25: Does Ameritech have the obligation to combine UNEs in certain circumstances?

(Appendix UNE, Section 1.1)

A. Position of the parties.

Ameritech agrees that it must provide access to unbundled network elements (UNEs), as required by § 251(c)(3). Ameritech also agrees to provide combinations of UNEs that Ameritech currently combines on its own network at the time of a TDS request, as required by Rule 51.315(b).

Under this rule, Ameritech cannot separate UNEs that are currently combined before offering the combination to TDS.

Ameritech objects to a TDS proposal to create additional combinations of UNEs. Ameritech contends that, under *IUB III*, the Panel cannot direct Ameritech to provide combinations of unbundled elements. *IUB III*, 219 F.3d at 758-59 (vacating Rule 51.315(c)-(f)). The Eighth Circuit interpreted § 251(c)(3) to require that ILECs unbundle network elements in a manner that permits requesting carriers to combine them. The statute requires access to the elements of an ILEC's network only on an unbundled basis. The Court objected to Rule 51.315(c)-(f) because the rule requires the ILECs to combine the network elements, rather than the requesting carrier.

On October 12, 2000, an arbitration panel arbitrating the interconnection agreement between AT&T Communications of Wisconsin and Ameritech Wisconsin (the AT&T Panel) directed Ameritech to provide additional combinations of UNEs. Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, PSCW docket 05-MA-120 at pp. 22-23 (Oct. 12, 2000). For those combinations not specified in the AT&T/Ameritech Agreement, the Panel directed the parties to use the Bona Fide Request process to establish the terms and rates for the new combinations. TDS urges this Panel to follow the decision of the AT&T Panel, in effect incorporating the requirements of the vacated rule, Rule 51.315(c)-(f), into the TDS/Ameritech interconnection agreement.

B. Decision.

This issue concerns the scope of the authority the Panel retains under the Eighth Circuit's order in *IUB III*. Ameritech asserts that federal law determines the manner in which UNEs will be made available to CLECs. Section 251(c) provides:

> (c) Additional obligations of incumbent local exchange carriers. In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:
> . . . .
> (3) Unbundled access. The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 [47 U.S.C. § 252]. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

47 U.S.C. § 251(c)(3).

In its *Local* Competition proceeding, the FCC adopted rules to implement § 251(c)(3). Rule 51.315, regarding the combination of unbundled network elements, provides:

> (a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.
>
> (b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.
>
> (c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:
> (1) Technically feasible; and

> (2) Would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.
>
> (d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.
>
> (e) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.
>
> (f) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(2) of this section must prove to the state commission that the requested combination would impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

In an earlier review of the issue of combination of unbundled network elements, the Supreme Court reversed the Eighth Circuit's decision to vacate § 51.315(b):

> Because this provision requires elements to be provided in a manner that "allows requesting carriers to combine" them, incumbents say that it contemplates the leasing of network elements in discrete pieces. It was entirely reasonable for the Commission to find that the text does not command this conclusion. It forbids incumbents to sabotage network elements that are provided in discrete pieces, and thus assuredly contemplates that elements may be requested and provided in this form (which the Commission's rules do not prohibit). But it does not say, or even remotely imply, that elements must be provided only in this fashion and never in combined form. Nor are we persuaded by the incumbents' insistence that the phrase "on an unbundled basis" in § 251(c)(3) means "physically separated." The dictionary definition of "unbundled" (and the only definition given, we might add) matches the FCC's interpretation of the word: "to give separate prices for equipment and supporting services." Webster's Ninth New Collegiate Dictionary 1283 (1985).
>
> The reality is that § 251(c)(3) is ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in § 251(c)(3)'s nondiscrimination requirement. As the Commission explains, it is aimed at preventing incumbent LECs from "disconnecting previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." Reply Brief for Federal Petitioners 23. It

> is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice.

AT & T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 394-95, 119 S.Ct. 721, 737-38, 142 L.Ed.2d 834 (1999). The Supreme Court did not address the Eighth Circuit's decision to vacate the rest of the rule addressing additional combinations of unbundled network elements, Rule 51.315(c)-(f).

In its subsequent decision on remand, *IUB III*, the Eighth Circuit reaffirmed its prior decision vacating the additional combinations rule:

> We are not persuaded by the respondents' contention that the Supreme Court's reinstatement of rule 51.315(b) affects our decision to vacate subsections (c)-(f). Nor do we agree with the Ninth Circuit that the Supreme Court's opinion undermined our rationale for invalidating the additional combinations rule. See U.S. West Communications v. MFS Intelenet, Inc., 193 F.3d 1112, 1121 (9th Cir. 1999), cert. denied, 2000 U.S. LEXIS 4680 (U.S. June 29, 2000) (No. 99-1641). The Ninth Circuit misinterpreted our decision to vacate subsections (c)-(f). We did not, as the Ninth Circuit suggests, employ the same rationale for invalidating subsections (c)-(f) as we did in invalidating subsection (b). See MCI Telecomms. v. U.S. West, 204 F.3d 1262, 1268 (9th Cir. 2000) ("The Eighth Circuit invalidated Rules 315(c)-(f) using the same rationale it employed to invalidate Rule 315(b). That is, the Eighth Circuit concluded that requiring combination was inconsistent with the meaning of the Act because the Act calls for 'unbundled' access.") Rather, the issue we addressed in subsections (c)-(f) was who shall be required to do the combining, not whether the Act prohibited the combination of network elements. See Iowa Utils. Bd., 120 F.3d at 813.
>
> Rule 51.315(b) prohibits the ILECs from separating previously combined network elements before leasing the elements to competitors. The Supreme Court held that 51.315(b) is rational because "[section] 251(c)(3) of the Act is ambiguous on whether leased network elements may or must be separated." AT & T Corp., 525 U.S. at 395. Therefore, under the second prong of Chevron, the Supreme Court concluded 51.315(b) was a reasonable interpretation of an ambiguous statute.

> Unlike 51.315(b), subsections (c)-(f) pertain to the combination of network elements. Section 251(c)(3) specifically addresses the combination of network elements. It states, in part, "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication service." Here, Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall "combine such elements." It is not the duty of the ILECs to "perform the functions necessary to combine unbundled network elements in any manner" as required by the FCC's rule. See 47 C.F.R. § 51.315(c). We reiterate what we said in our prior opinion: "The Act does not require the incumbent LECs to do all the work." Iowa Utils. Bd., 120 F.3d at 813. Under the first prong of Chevron, subsections (c)-(f) violate the plain language of the statute. We are convinced that rules 51.315(c)-(f) must remain vacated.

IUB III, 219 F.3d at 759.

Ameritech argues that the Eighth Circuit's decision in *IUB III* controls the disposition of the TDS request in this proceeding. Ameritech argues that the court in *IUB III* reads the final sentence of § 251(c)(3) to mean that the ILEC must provide the UNEs, so that the CLEC can combine them. In other words, the Act makes an affirmative assignment of tasks or roles: the ILEC has the duty of providing the elements; the CLEC has the duty of combining those elements to create discrete services.

In Ameritech's view, this statutory assignment of roles precludes any alternative assignment of duties a state commission may wish to order. An alternative assignment of roles conflicts with the statute's directions, and is therefore unlawful. To support its view, Ameritech also cites the Hobbs Act, 28 U.S.C. § 2342 *et seq.* Under that statute, the decision of an appellate court reviewing an administrative rule is binding in every federal circuit, not just the circuit in which the review takes place. Ameritech concludes that the Eighth Circuit's interpretation of § 251(c)(3) is binding upon the PSCW and this Panel under the Hobbs Act, and

any TDS proposal requiring Ameritech to provide UNE combinations must be rejected as unlawful.

The AT&T Panel interpreted § 251(c)(3) and the Eighth Circuit's order differently. The AT&T Panel agreed with Ameritech that the FCC rule, Rule 51.315(c)-(f), does not presently govern the disposition of several issues in that arbitration that concerned additional combinations of unbundled network elements. However, the AT&T Panel read § 251(c)(3) more generally to create a framework in which elements of an ILEC's network are made available to a CLEC. While the Eighth Circuit vacated the FCC's rules interpreting and implementing this section, that court did not address a state's concurrent and overlapping authority to regulate local telecommunications services offered within its jurisdiction.

First, the AT&T Panel noted that the Supreme Court found that the underlying statutory provision was ambiguous. The Supreme Court commented in its order:

> [Section 251(c)(3)] does not say, or even remotely imply, that elements must be provided only in this fashion and never in combined form. Nor are we persuaded by the incumbents' insistence that the phrase "on an unbundled basis" in § 251(c)(3) means "physically separated."

AT & T Corp. v. Iowa Utils. Bd., 525 U.S. at 394. Accordingly, the AT&T Panel concluded that the underlying statute did not preclude the its consideration of proposals regarding additional combination of unbundled network elements.

Second, the Court in *IUB III* rejected Rule 51.315(c)-(f) because the rule exceeded the FCC's authority under the federal statute. The court did not consider at all the concurrent authority of a state commission to regulate the provision of local telecommunications services offered within its jurisdiction. Thus, the authority of a state commission, acting under state law, to regulate the terms and conditions under which local exchange carriers interconnect was not

addressed by *IUB III*. The AT&T Panel concluded that it had discretionary authority under federal law, as well as authority under Wisconsin law, to direct Ameritech to provide UNE combinations notwithstanding the decision of the Eighth Circuit in *IUB III*.

The Panel finds that the AT&T Panel correctly interpreted the existing state of the law on the subject of UNE combinations. Section 251(c)(3) is ambiguous and does not exclude consideration of the TDS proposals regarding UNE combinations. The Eighth Circuit's order in *IUB III* addresses only the authority of the FCC to regulate the manner in which ILECs provide UNE combinations. The Court did not consider and did not decide the scope of Wisconsin's authority to regulate the interconnection of local telecommunications services within this state.

The Panel concludes that it has discretionary authority under federal law, as well as authority under Wisconsin law, specifically, Wis. Stat. §§ 196.04, 196.219(3)(a) and (4), to direct Ameritech to provide UNE combinations notwithstanding the decision of the Eighth Circuit in *IUB III*.

Issue TDS-27: How should the list of UNEs that Ameritech must provide be defined?

(Appendix UNE, Section 2.2.9)

A. Position of the parties.

Ameritech proposes that section 2.2.9 of Appendix UNE read:

> **SBC-13STATE** will provide CLEC nondiscriminatory access to UNEs (Act, Section 251(c)(3), Act, and Section 271(c)(2)(B)(ii); 47 CFR Section 51.307(a)):
> …
> 2.2.9. Only to the extent it has been determined by the FCC or Commission that these elements are required by the "necessary" and "impair" standards of the Act (Act, Section 251 (d)(2)). In the event that the FCC or Commission changes the list of required unbundled network elements, the parties shall comply with Section 4.0 of the General Terms and Conditions to make the necessary revisions to this Appendix.

Ameritech believes this language is necessary to clarify that it is obligated to provide unbundled access only to those network elements that have been found by the FCC or the PSCW to satisfy the "necessary and impair" standard of § 251(d)(2).

TDS objects to this provision. TDS argues that, while Ameritech is required to provide those UNEs that are within the definition of the Act, there is nothing that requires an affirmative order of the PSCW or the FCC prior to making a UNE available.

B. Decision.

Ameritech proposes affirmative language that declares at the outset that its obligation to provide access to UNEs is limited to those UNEs designated by state and federal authority. TDS responds that such a declaration is inconsistent with the Act and is also inconsistent with the bona fide request (BFR) process provided elsewhere in the Agreement. TDS is concerned that the proposed language shifts the burden to TDS to petition the FCC or PSCW to amend its rules to add additional "approved" UNEs.

As a practical matter, it is unlikely that resolution of this issue will affect the business opportunities of either party whatsoever. Ameritech proposes contract language that in essence confirms that it will comply with applicable law. TDS points out that Ameritech could voluntarily agree to provide access to network elements in addition to the access required by law. However, the proposed agreement generally permits the parties to revise and expand the scope of the parties' access to UNEs by mutual agreement. Ameritech's proposed language for this issue merely indicates that it will pursue a conservative course in its review of requests for mutual agreement to additional access.

The Panel finds that the language proposed by Ameritech accurately states the obligation it must fulfill under the Act. However, the parties may append the phrase, "…or by mutual agreement of the Parties," to the first sentence of section 2.2.9 if they wish.

The Panel awards the language as proposed by Ameritech for section 2.2.9 of Appendix UNE.

Issue TDS-28: Should Ameritech be required to provide UNEs where facilities modifications are required?

(Appendix UNE, Section 2.9)

A. Position of the parties.

This issue concerns the overlap of requirements and commitments that have been proposed and accepted in two different cases now pending before the PSCW. The parties have agreed to use the Facilities Modification and Construction Policy (FMOD Policy) adopted in interim orders issued by the PSCW in docket 6720-TI-160. The dispute here concerns how to state that agreement in this proceeding.

Ameritech proposes the following language for section 2.9.1 of Appendix UNE:

> Access to UNEs is provided under this Agreement over such routes, technologies, and facilities as **SBC-13STATE** may elect at its own discretion, provided that such routes, technologies and facilities are non-discriminatory with respect to the way SBC-13STATE provides services to its own end users, affiliates, or other carriers. **SBC-13STATE** will provide access to UNEs where technically feasible. Where facilities and equipment are not available, **SBC-13STATE** shall not be required to provide UNEs. However, CLEC may request and, to the extent required by law, **SBC-13STATE** may agree to provide UNEs, through the Bona Fide Request (BFR) process. All of the UNEs provided for under this Agreement shall be presumed to be technically feasible within the SBC-13STATE exchange areas.
>
> 2.9.1.1. Nothing contained in this Appendix is intended to contradict or supersede commitments made by Ameritech-Wisconsin in Accessible Letter

> CLEC AM00-153, or the modifications to those commitments as reflected in issues A/F of the Interlocutory Order issued by the PSCW on December 15, 2000 in Docket 6720-TI-160.

TDS proposes to delete the third sentence of proposed section 2.9.1 and section 2.9.1.1 in its entirety. TDS proposes to insert the following sentence as the third sentence of section 2.9.1:

> Where facilities require modifications they will be handled under the facilities modification process in Appendix ___.

In sum, TDS proposes to include the FMOD Policy adopted in docket 6720-TI-160 as an appendix in the Agreement at issue in this proceeding. Ameritech would exclude the FMOD Policy from the Agreement, and merely note that the FMOD Policy exists and may create access to UNEs in addition to the access that the parties are otherwise entitled to under this Agreement.

B. Decision.

This issue is interesting in that the parties appear to agree with respect to the process with which facilities will be modified to accommodate new and additional access to UNEs, and other service features as discussed below. The concern here is largely procedural. The agreements have been completed and adopted in another proceeding. The record to support those agreements is largely found in that proceeding. Incorporating the results of the other proceeding into this Agreement may create contractual enforcement privileges not intended in the other proceeding. Review of enforcement actions may be handled differently and assigned to different courts for judicial review.

Ameritech argues that this approach is confused and unnecessary. The Panel agrees. Ameritech is required to provide access to network elements under Rule 51.319, as well as other orders of the FCC and PSCW. This is a minimum requirement for which the Agreement shall provide contractual and regulatory remedies for enforcement.

Ameritech has also agreed in docket 6720-TI-160 to comply with a process for modification of its facilities to support the services at issue in that docket. The PSCW has adopted an interim order accepting that agreement and directing compliance. To the extent that the orders in docket 6720-TI-160 impose an additional duty upon Ameritech to provide access not otherwise required by the Agreement in this proceeding, that duty controls and the injured party can seek enforcement of that duty through the complaint process or other procedure adopted in docket 6720-TI-160.

This is not to say that the Panel subscribes to Ameritech's interpretation of the order in *IUB III* concerning superior quality. There may be some circumstances in which modification of facilities is necessary to foster competition. It is not clear that the federal act prohibits an order directing an ILEC to install equipment to extend new services to existing customers or extend existing services to new customers. To permit an ILEC control over those decisions that a CLEC might make to build its business would seriously undermine the goals of the Act. However, it is not necessary to address that issue at this time.

The Panel finds that the contract language proposed by Ameritech is reasonable, and accurately states its obligation to provide access to UNEs.

Issue TDS-30: What limits should be put on TDS' use of UNEs?

(Appendix UNE, Section 2.2.9)

A. Position of the parties.

Ameritech proposes the following language for section 2.9.8 of Appendix UNE:

> Unbundled Network Elements may not be connected to or combined with **SBC-13STATE** access services or other **SBC-13STATE** tariffed service offerings with the exception of tariffed Collocation services where available.

Ameritech asserts that this proposed language implements a requirement of the FCC stated in Supplemental Order Clarification, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket 96-98, FCC No. 00-183 (May 19, 2000) (Supplemental Order Clarification).

TDS objects to Ameritech's proposed language. TDS does not dispute that the FCC has prohibited some UNE combinations. TDS argues that Ameritech's proposed language would prohibit combinations in addition to those prohibited by the FCC order.

B. Decision.

In the Third Report and Order, the FCC considered how to address UNE combinations that can be used to bypass ILEC tariffed services.

> Parties have raised again arguments that allowing requesting carriers to use unbundled network elements to provide exchange access would have significant policy ramifications. As BellSouth explains, existing combinations of unbundled loops and transport network elements are a "direct (and often physically identical) substitute for the incumbent LEC's regulated access services . . .," but priced significantly lower than tariffed special access services. The special access service that BellSouth and SBC refer to consists of entrance facilities from the interexchange carrier's point of presence to an incumbent LEC's switch or serving wire center, a dedicated transport link from the SWC to an end office, and a channel termination facility from the end office to the end user.

Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket 96-98, FCC No. 99-238, ¶ 485 (Nov. 5, 1999) (UNE Remand Order).

However, the FCC also noted that a requesting carrier is free to order UNEs to reach collocated facilities:

> As an initial matter, under existing law, a requesting carrier is entitled to obtain existing combinations of loop and transport between the end user and the

> incumbent LEC's serving wire center on an unrestricted basis at unbundled network element prices. In particular, any requesting carrier that is collocated in a serving wire center is free to order loops and transport to that serving wire center as unbundled network elements because those elements meet the unbundling standard, as discussed above. Moreover, to the extent those unbundled network elements are already combined as a special access circuit, the incumbent may not separate them under rule 51.315(b), which was reinstated by the Supreme Court. In such situations, it would be impermissible for an incumbent LEC to require that a requesting carrier provide a certain amount of local service over such facilities.

Id., at ¶ 486.

Thus, there exists a question regarding the degree to which a requesting carrier can use combinations of unbundled network elements to provide local exchange and exchange access service. Some combinations could be used to bypass special access tariffs, undermining a portion of the revenue upon which universal service programs depend. The FCC deferred its final answer to an additional rulemaking. *See* Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket 96-98, FCC No. 99-238, (Nov. 5, 1999) (Fourth FNPRM).

In the interim, the FCC ruled that incumbent carriers could constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service. Supplemental Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket 96-98, FCC No. 99-370, (Nov. 24, 1999) (Supplemental Order). However, the FCC lifted this constraint in circumstances where the requesting carrier uses combinations of unbundled loop and transport network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.

In the Supplemental Order Clarification, the FCC clarified what was meant by the phrase, "significant amount of local exchange service." The FCC determined:

> 22. We find that a requesting carrier is providing a "significant amount of local exchange service" to a particular customer if it meets one of three circumstances:
>
> (1) As we found in the Supplemental Order, the requesting carrier certifies that it is the exclusive provider of an end user's local exchange service. The loop-transport combinations must terminate at the requesting carrier's collocation arrangement in at least one incumbent LEC central office. This option does not allow loop-transport combinations to be connected to the incumbent LEC's tariffed services. Under this option, the requesting carrier is the end user's only local service provider, and thus, is providing more than a significant amount of local exchange service. The carrier can then use the loop-transport combinations that serve the end user to carry any type of traffic, including using them to carry 100 percent interstate access traffic; or
>
> (2) The requesting carrier certifies that it provides local exchange and exchange access service to the end user customer's premises and handles at least one third of the end user customer's local traffic measured as a percent of total end user customer local dialtone lines; and for DS1 circuits and above, at least 50 percent of the activated channels on the loop portion of the loop-transport combination have at least 5 percent local voice traffic individually, and the entire loop facility has at least 10 percent local voice traffic. When a loop-transport combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), each of the individual DS1 circuits must meet this criteria. The loop-transport combination must terminate at the requesting carrier's collocation arrangement in at least one incumbent LEC central office. This option does not allow loop-transport combinations to be connected to the incumbent LEC's tariffed services. Under this option, a carrier's provision of at least one third of an end user's local traffic is significant because it indicates that the carrier is providing more than a de minimis amount, but less than all, of the end user's local service. As we stated above, we find this to be a reasonable indication that the requesting carrier has taken affirmative steps to provide local exchange service to the end user, and is not using the facilities solely to bypass special access service. Such a carrier may then use unbundled loop-transport combinations to serve the customer as long as the active channels on the facility, and the entire facility, are being used to provide the amount of local exchange service specified in this option, thereby offering the carrier some flexibility to use the combinations to provide other services besides local exchange service; or

> (3) The requesting carrier certifies that at least 50 percent of the activated channels on a circuit are used to provide originating and terminating local dialtone service and at least 50 percent of the traffic on each of these local dialtone channels is local voice traffic, and that the entire loop facility has at least 33 percent local voice traffic. When a loop-transport combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), each of the individual DS1 circuits must meet this criteria. This option does not allow loop-transport combinations to be connected to the incumbent LEC's tariffed services. Under this option, collocation is not required. The requesting carrier does not need to provide a defined portion of the end user's local service, but the active channels on any loop-transport combination, and the entire facility, must carry the amount of local exchange traffic specified in this option. This option may be the most efficient for requesting carriers that provide high capacity facilities to large end users that carry a significant amount of local voice traffic, but that represent only a small portion of the end user's total local exchange service. This option recognizes that although the requesting carrier is not providing one-third of the end user's local voice service, as set forth in option 2, the carrier has still taken affirmative steps to provide local service to the customer, and is not using the circuits simply to bypass special access. As the record indicates, while such a carrier may not be providing a significant amount of the customer's total local service, the 50 percent facility threshold indicates that a significant portion of the service that the carrier does provide to the end user is local.

The issue in dispute in this proceeding is whether the language proposed by Ameritech accurately expresses the privilege it is entitled to under the interim decision in the Supplemental Order Clarification. TDS asserts that the proposed language goes well beyond the constraint in the Supplemental Order Clarification. TDS recommends the approach adopted by the AT&T Panel on a similar issue.

In the AT&T/Ameritech arbitration, the AT&T Panel considered a proposal from AT&T regarding a particular loop-transport combination, Enhanced Extended Link (EEL). In order to prevent bypass of Ameritech's tariffed Special Access service, the AT&T Panel placed a restriction upon the use of EELs:

> … AT&T may only use Network Elements and Combinations to provide Enhanced Extended Loops where the End User customer and the other termination of that EEL, whether at AT&T's switch or another End User

> customer location, are both located within the same Ameritech local calling area.

The restriction adopted by the AT&T Panel is a shortcut intended to avoid numerous customer specific evaluations prior to establishing a particular EEL that may be necessary under para. 22 of the Supplemental Order Clarification.

The Panel rejects Ameritech's proposed language. The Panel finds that the language is overly broad and would reach combinations in addition to those prohibited by the FCC in the Supplemental Order Clarification. In particular, the proposed language extends to combinations other than loop-transport combinations, and the proposed language fails to permit TDS to demonstrate that it will provide a significant amount of local exchange service over a given loop-transport combination.

The Panel directs the parties to delete the language proposed for section 2.9.8 of Appendix UNE.

Issue TDS-31: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix UNE, Section 2.10.1)

A. Position of the parties.

Ameritech proposes the following language for Section 2.10.1 of Appendix UNE

> Each UNE will be provided in accordance with **SBC-13STATE** Technical Publications or other written descriptions, if any, as changed from time to time by **SBC-13STATE** at its sole discretion. All UNEs will be provided at the same rates terms and conditions and with the same quality of service as SBC-13STATE provides for itself, any affiliate or any other telecommunications carrier.

TDS objects to the first sentence of Ameritech's proposed text.

B. Decision.

For the reasons discussed in Issue TDS-20 above, the Panel awards the language proposed by Ameritech.

Issue TDS-32: Should the agreement provide for processes related to ordering of UNEs as shown?

(Appendix UNE, Sections 2.11-2.18)

A. Position of the parties.

In Section 2.11, Ameritech proposes to refer to the item at issue as an Unbundled Network Element. TDS objects to the word *Unbundled.*

In Section 2.12, TDS proposes that Ameritech provide a Single Point of Contact for purposes of problem resolution or escalation related to the ordering and provisioning of high capacity services. Ameritech objects to the Single Point of Contact, and prefers to address problems using existing assigned staff.

In Section 2.13 and 2.14, TDS proposes to add an additional appendix to the Agreement to specify certain performance measures. In Section 2.15, TDS proposes to specify the timing of notices rejecting TDS service orders. Ameritech generally objects that this subject matter is presently before the PSCW in docket 6720-TI-160, and the Panel should adhere to the order issued by the PSCW in that proceeding.

In Section 2.16 and 2.17, TDS proposes language related to the FMOD Policy discussed above. In Section 2.18, TDS proposes language concerning acceptance testing. Ameritech generally

objects to this language because it conflicts with agreements reached and adopted in docket 6720-TI-160.

B. Decision.

1. Section 2.11. Ameritech proposes to use the phrase *Unbundled Network Elements* in Section 2.11. This phrase follows from the text of § 251(c)(3), which imposes upon an incumbent local exchange carrier the duty to provide unbundled access to network elements. To the extent that the use of this phrase is intended to contribute to Ameritech's argument regarding the use of UNE combinations in Issue TDS-25, the Panel found above that § 251(c)(3) is ambiguous and permits several interpretations, including the one adopted above.

2. Section 2.12. TDS proposes that Ameritech assign a single staff member to address TDS service issues related to high capacity services. The Panel believes the process of staff assignments within SBC/Ameritech is a matter within the business judgment of the company. The Panel does not believe it is appropriate to manage Ameritech's hiring and staffing decisions.

Instead, the contract should specify the intervals within which various works requests must be completed. To the extent that the parties have decided to use the intervals adopted in docket 6720-TI-160, those intervals should be used to evaluate the parties' performance. If Ameritech finds that a single point of contact improves its ability to meet the requirements of the Agreement, it may adopt that approach.

3. Sections 2.13, 2.14 and 2.15. The Panel is concerned that this issue has the potential of undermining the orders the PSCW has adopted and will adopt in docket 6720-TI-160. That docket was established to create a common approach to a variety of issues related to provision of interconnected local service. There is an extensive record in that proceeding on these issues.

The Panel adopts the language as proposed by Ameritech. The Panel will defer to the intervals, performance measures, testing procedures, and other decisions of the PSCW in docket 6720-TI-160.

4. Sections 2.16 and 2.17. For the reasons stated above in Issue TDS-28, the Panel awards the language proposed by Ameritech.

5. Sections 2.18. This provision also concerns a matter addressed pending before the PSCW in docket 6720-TI-160. For the reasons discussed above, the Panel adopts the language proposed by Ameritech.

Issues TDS-33 - 40: Should Ameritech Wisconsin be required to offer adjacent location access to UNEs in Wisconsin as it does in California?

(Appendix UNE, Article 4)

A. Position of the parties.

TDS proposes a section in the Appendix UNE that would employ an adjacent location method of access similar to a method adopted in California. Ameritech objects to the proposed language because the adjacent location access is outdated, inefficient and unnecessary.

B. Decision.

TDS proposes to adapt a policy adopted by the California Public Utilties Commission to facilitate access to UNEs when the space available for physical collocation at a central office has been exhausted. TDS simply argues that when the standard methods of collocation are not available, permitting the proposed adjacent location method of access would permit TDS or other CLECs to compete even though collocation space in a given central office is not available.

Ameritech asserts that adjacent location access is not required by the collocation orders of the FCC. Ameritech argues that in those orders collocation refers to the installation of equipment necessary for interconnection or access to unbundled network elements on the premises of the local exchange carrier. The adjacent location proposal concerns installation of access to equipment located off premises. Ameritech also questions the specific requirements that TDS proposes.

The FCC has addressed the issue of space exhaustion. This portion of the FCC's Collocation Order was upheld on review:

> We also reject petitioners' claim that the FCC lacks authority to require LECs to make available space beyond their central offices for the collocation of competitors' equipment. The Collocation Order simply requires "incumbent LECs, when space is legitimately exhausted in a particular LEC premises, to permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible." Id. at 4786 P 44. The rule seeks to address the "issue of space exhaustion by ensuring that competitive carriers can compete with the incumbent, even when there is no space inside the LEC's premises." Id. The rule clearly furthers the purpose underlying § 251(c)(6). The rule is also eminently reasonable: adjacent collocation is required only when space in the central offices is exhausted; adjacent collocation may occur only to the extent that it is technically feasible; adjacent collocation is subject to state regulations over zoning, design, and construction parameters; and adjacent collocation is subject to reasonable safety and maintenance requirements. And petitioners can find no argument to show that this rule is impermissible under § 251(c)(6), for the simple reason that the disputed "adjacent" properties all are on the LECs' "premises," which is all that is required by the statute.
>
> In sum, the FCC's regulations forbidding LECs from requiring competitors to "cage" their equipment and requiring LECs, under limited circumstances, to use adjacent property for the collocation of competitors' equipment are permissible and reasonable under step two of Chevron.

GTE Service Corporation v. Federal Communications Commission, 205 F.3d 416, 425 (D.C. Cir. 2000). The access method proposed by TDS is in addition to the use of adjacent property upheld in this order.

The Panel decides not to adopt the TDS proposal in its entirety. It does so for the following reasons. First, the Panel is not aware of any office in this state where access to UNEs has been denied due to lack of space. Thus, there is no urgent reason to resolve this issue in this arbitration.

Second, this matter is better handled in a generic proceeding. Ameritech argues that the TDS proposal would accelerate exhaustion of entrance facilities and impair competitive entry. TDS responds that Ameritech's argument on behalf of other competitors is suspect. The Panel agrees that Ameritech is an unlikely advocate for the interests of other competing carriers. Nonetheless, the point is that there are additional parties that have an interest in the outcome of this issue. Given the lack of urgency, the Panel denies the language proposed by TDS and advises the parties to separately petition the PSCW to open a proceeding to evaluate this proposal.

Issue TDS-41: What is the appropriate scope of the Bona Fide Request (BFR) process?

(Appendix UNE, Section 5.2.1)

A. Position of the parties.

The parties have agreed to the following language for section 5.2.1 of Appendix UNE:

> A Bona Fide Request (**"BFR"**) is the process by which CLEC may request **SBC-AMERITECH** to provide CLEC access to new, undefined UNE, (a "Request"), that is required to be provided by **SBC-AMERITECH** under the Act but is not available under this Agreement or defined in a generic appendix at the time of CLEC's request.

TDS proposes to amend this language by adding the following two sentences:

> The BFR process will not be used for currently defined UNEs that SBC13-STATE asserts require non-standard provisioning or intervals. These will be handled by the Facilities Modifications process.

Ameritech objects to the addition of these sentences.

B. Decision.

For the reasons discussed in Issue TDS-28 above, the Panel finds it is appropriate to exclude references to the FMOD Policy and associated process. The Panel awards the language proposed by Ameritech.

Issue TDS-58: Should SBC be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by SBC internal documents that SBC can change at its sole discretion, without notice to or agreement by TDS Metrocom? Should the due dates for the installation of Local Interconnection and Meet Point Trunks be set forth in the contract, or by reference to SBC tariff?

(Appendix ITR, Section 8.8)

A. Position of the parties.

Ameritech proposes the following language for section 8.8 of Appendix ITR:

> Due dates for the installation of Local Interconnection and Meet Point Trunks covered by this Appendix shall be based on each of the **SBC-13STATE**'s intrastate Switched Access intervals from receipt of a request by either party. If either CLEC or **SBC-13STATE** is unable to or not ready to perform Acceptance Tests, or is unable to accept the Local Interconnection Service Arrangement trunk(s) by the due date, the parties will reschedule the date no more than 7 days from the original date. If the CLEC requests a service due date change which exceeds the allowable service due date change period, the ASR must be canceled by the CLEC. Should the CLEC fail to cancel such an ASR, **SBC-13STATE** shall treat that ASR as though it had been canceled.

TDS proposes to replace the phrase, "based on each of the **SBC-13STATE**'s intrastate Switched Access intervals," with the phrase, "no longer than 21 days," in the first sentence. TDS proposes to delete the final two sentences from this section.

B. Decision.

In its brief, Ameritech stated that its intrastate Switched Access intervals are as follows: 14 days for an order of up to 48 trunks; 15 days for an order of up to 96 trunks; and an interval to be negotiated on a case-by case basis for an order greater than 96 trunks. First, it is not clear to the Panel why the Agreement cannot simply state the intervals plainly, and avoid the dispute concerning incorporation tariff requirements by reference. From the discussion in the briefs, the Panel finds that there is agreement that the interval for orders of up to 96 trunks should be 21 days.

The dispute here concerns whether the interval should be negotiated in the case of orders in excess of 96 trunks. There is no discussion of how frequently orders in excess of 96 trunks might arise. The Panel finds it is reasonable to apply a common interval of 21 days to all orders. For the majority of requests, the interval is longer than that Ameritech proposed.

In briefs, the parties devoted considerable energy and passion debating whether to exclude the final two sentences of this section. The Panel believes this energy is misdirected. TDS presumably wants the service installed. If the company is unable to meet scheduled dates to install and test trunks, the party that is injured is TDS. To add a rule that states that, if TDS cannot reschedule within seven days, it must start over with a new request, appears unnecessary. In the unlikely event that the installation of the trunks must be postponed and TDS cannot

reschedule with 7 days, the parties should have the flexibility to determine an appropriate date for a second try.

The Panel awards the contract language proposed by TDS:

> *Due dates for the installation of Local Interconnection and Meet Point Trunks covered by this Appendix shall be no longer than 21 days from receipt of a request by either party. If either CLEC or* ***SBC-13STATE*** *is unable to or not ready to perform Acceptance Tests, or is unable to accept the Local Interconnection Service Arrangement trunk(s) by the due date, the parties will reschedule the date no more than 7 days from the original date.*

Issue TDS-59: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix Collocation, Section 2.17.1)

A. Position of the parties.

Ameritech proposes the following language for section 2.17.1 of Appendix Collocation:

> **"Interconnector's Collocation Services Handbook"** is a publication provided to the CLECs which provides information on how to order collocation arrangements from **SBC-8STATE**. The document also provides information about **SBC-8STATE**'s collocation processes and requirements and is located on the CLEC website (https://clec.sbc.com/).
>
> 2.17.1 **SBC-AMERITECH** provides similar information at a website (http://tcnet.ameritech.com/).

B. Decision.

The Panel discussed references to SBC-Ameritech internal documents in Issue TDS-20 above. This issue is slightly different in that it is more definitional in nature. To the extent that TDS objects to a reference to this document, the Panel will address that objection below.

The Panel awards the language as proposed by Ameritech.

Issue TDS-62: Should Ameritech Wisconsin be required to release reserved space prior to denying a request for collocation?

(Appendix Collocation, Sections 4.1.3.1 and 4.1.3.2)

A. Position of the parties.

Ameritech contends that the language proposed by TDS interferes with Ameritech's right to reserve space for itself as granted by the FCC in the First Report and Order ¶ 604. Ameritech also argues that TDS' proposed language only allows Ameritech to recover security costs that are "necessary" while federal law allows for broader recovery.

TDS argues that it's proposed language does not require Ameritech to release lawfully reserved space except where it releases that space for purposes other than which it was reserved.

B. Decision.

Both parties agree that Ameritech is obligated to release space on a nondiscriminatory basis where it is released for a use other than which it was reserved. TDS has not proposed language that limits the release of space to protect Ameritech's right to reserve space for defined purposes while requiring it to release space in a nondiscriminatory manner if that release is for purposes other than for which it was reserved. The language proposed by TDS, as it stands, does not discriminate between these situations. TDS agrees that this distinction is not reflected in the proposed sentence (Sullivan Testimony, Tr. Vol. 1, p. 129). The language proposed by Ameritech satisfies the requirements of the First Report and Order and leaves Ameritech's right to reserve space intact.

Both parties also agree that there is nothing in federal law requiring that security measures for which an ILEC may recover costs be "necessary." TDS' testimony and lack of

argument regarding the inclusion of this provision indicate that it agrees with Ameritech, that this language is not required. (Sullivan Testimony, Tr. Vol. 1, p. 133).

This Panel awards the language proposed by Ameritech as follows:

4.1.3.1. Subject to technical feasibility and security requirements, ***SBC-13STATE*** *will allow CLEC to collocate in any unused space (space that is vacant and does not contain* ***SBC-13STATE*** *equipment, is not reserved for growth, is not used for administrative or other functions, and is not needed for access to, egress from, or work within occupied or reserved space, provided that unused space will be administered on a non-discrimnatory basis, that is to the extent that SBC-13STATE, has or would move administrative or other functions ~~or release reserved space~~ to accommodate its own equipment, it will do so for CLEC) in* ***SBC-13STATE****'s Eligible Structure (eg. Central Office), without requiring the construction of a cage or similar structure, and without requiring the creation of a separate entrance to CLEC's dedicated space.* ***SBC-13STATE*** *will designate the space to be used for cageless collocation.* ***SBC-13STATE*** *may require CLEC to use a central entrance to the building in which the cageless collocation is provided, but may not require construction of a new entrance for CLEC's or other collocating carriers' use, and once inside the building,* ***SBC-13STATE*** *must permit CLEC to have direct access to CLEC's equipment.*

And;

4.1.3.2. ***SBC-13STATE*** *may not require CLEC to use an intermediate interconnection arrangement (i.e., a POT bay) that simply increases collocation costs without a concomitant benefit directly to CLEC, in lieu of direct connection to* ***SBC-13STATE****'s network if technically feasible. In addition,* ***SBC-13STATE*** *may not require CLEC to collocate in a room or isolated space, separate from* ***SBC-13STATE****'s own equipment, which only serves to increase the cost of collocation and decrease the amount of available collocation space.* ***SBC-13STATE*** *may take reasonable steps to protect its own equipment, such as, but not limited to, enclosing* ***SBC-13STATE*** *equipment in its own cage, and other reasonable security measures examples of which are described herein.* ***SBC-13STATE*** *may utilize reasonable segregation requirements that do not impose ~~unnecessary~~ additional cost on CLEC.*

Issue TDS-64: What should be the required depth of the equipment bay?

(Appendix Collocation, Sections 4.1.3.1.2 and 4.1.3.1.4)

A. Position of the parties.

TDS proposes language that creates equipment bays with a depth of 17" as opposed to the 15" proposed by Ameritech. Ameritech argues that section 4.1.3.1.3 allows TDS to request bays with a depth other than the 15" proposed as the standard bay depth. Both parties agree that 15" is the industry standard for most collocation equipment. TDS argues that "state of the art" equipment however requires a 17" bay.

B. Decision.

TDS concedes, that the request for 17" bay depth is being sought to accommodate a single piece of equipment. (Lawson Testimony, Tr. Vol. 1, p. 137). TDS also agrees that "up to this point in time, [the standard depth] has been no more than 15 inches." (Lawson, Tr. Vol. 1, p.139).

Ameritech provides in its collocation appendix an opportunity for TDS to obtain non-standard bay depths upon request. Further, TDS has not demonstrated that the standard bay depth has changed or will change from 15."

This Panel awards the language proposed by Ameritech as follows:

> *4.1.3.1.2. Standard bay dimensions cannot exceed 7'0" high, and 23" interior width, 26" exterior width, and up to 15" deep.*

And;

> *4.1.3.1.4* ***SBC-13STATE*** *prefers that the equipment mounted in the bay be flush mounted with the front of the bay, however the equipment must not be mounted beyond the lower front kick plate (normally 5") for appropriate egress. The total depth of bay, including equipment, should not exceed 15" for a standard bay.*

Issue TDS-65: What should be the definition of "Legitimately Exhausted"?

(Appendix Collocation, Sections 4.1.4.0 to 4.1.4.0.1)

A. Position of the parties.

Ameritech argues that the language proposed by TDS to define "Legitimately Exhausted" is unnecessary and overly broad. Ameritech contends that sec. 5.11 of the collocation appendix affords CLECs an opportunity to request that obsolete equipment be removed to make space available for collocation. Ameritech is concerned that it will be required to remove equipment even when there is no request for collocation space, tying up valuable Ameritech resources. Further, Ameritech argues that the language proposed by TDS imposes obligations on Ameritech above and beyond those required by the FCC by requiring it to remove personnel to accommodate a CLEC's collocation request.

TDS argues that the language it proposes clarifies that Ameritech must first remove obsolete equipment from usable collocation space before it may claim that collocation space is exhausted.

B. Decision.

Both parties agree that the term exhausted is only triggered when there is an existing request for collocation space. The provisions of section 5.11 of the collocation appendix require that a CLEC specifically request that obsolete equipment be removed even where space could be made available through the removal of the equipment. It is reasonable to require Ameritech to only claim exhaustion, in a case where a CLEC has requested collocation space, if Ameritech has first determined whether space can be made available by removing unused obsolete equipment. Ameritech requires in other sections of this collocation appendix that CLECs remove unused equipment within a given period of time without regard to whether a request for the space is

made. It is only fair to require Ameritech to remove unused obsolete equipment where an actual request has in fact been made.

TDS' proposed language in sec. 4.1.4.0.1 goes beyond requesting the ILEC to limit collocation space denial to instances where space is exhausted to include a requirement that Ameritech relocate all "personnel that are not essential to the function of a particular premise, i.e., marketing personnel, human resources personnel, etc." This broad restriction of Ameritech's administrative discretion is not supported by any TDS testimony, arguments, or references to existing law or policy.

This Panel awards most of the language proposed by TDS with the exception of the language regarding the removal of personnel as follows:

> *4.1.4.0. Legitimately Exhausted–*
> *4.1.4.0.1. When all space in an ILEC Premises that can be used or is useful to locate telecommunications equipment in any of the methods of collocation available is exhausted or completely occupied the premises will be considered legitimately exhausted. Before the ILEC may make a determination that space is legitimately exhausted, the ILEC must have removed all unused obsolete equipment from the Premises and made such space available for collocation; however, removal of the equipment shall not cause an unreasonable delay in the ILEC's response to the CLEC's application or in provisioning collocation arrangements. The determination of exhaustion is subject to dispute resolution by the Commission.*

Issue TDS-66: Should Ameritech Wisconsin be allowed to exercise control over the design, construction and placement of adjacent structures?

(Appendix Collocation, Section 4.1.4.1)

A. Position of the parties.

Ameritech argues that the FCC, in its *Advanced Services Order*, grants an ILEC right to control the design, construction and placement of TDS' adjacent structures for collocation. First

Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 14 F.C.C.R. 4761, 4786, ¶ 44 (Mar. 31, 2001) (Advanced Services Order). Further, Ameritech contends that TDS' proposed language allows it to "collocate equipment that is not necessary for interconnection or access to UNEs" (Ameritech Br. p. 73).

TDS argues that the control granted to the ILECs in the Advanced Services Order is only applicable to "reasonable safety and maintenance requirements."

B. Decision.

The specific language of the *Advanced Services Order* as it applies to ILEC control over adjacent collocation is as follows:

> Because zoning and other state and local regulations may affect the viability of adjacent collocation, and because the incumbent LEC may have a legitimate reason to exercise some measure of control over design or construction parameters, we rely on state commissions to address such issues. In general, however, the incumbent LEC must permit the new entrant to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements. The incumbent must provide power and physical collocation services and facilities, subject to the same nondiscrimination requirements as traditional collocation arrangements.

Advanced Services Order, 14 FCC Rcd at 4786, ¶ 44.

The language in the first sentence cited above in the *Advanced Services Order* clearly indicates that ILECS may have some control over the design and construction parameters of adjacent collocation proposed by CLECs. However, upon reviewing the subsequent sentence it is also clear that the FCC modified the previous sentence by issuing a guide for state commission to allow CLECs to procure or construct adjacent collocation space subject only to "reasonable safety and maintenance requirements." This does not translate in the record nor in the GTE

decision cited by Ameritech into Ameritech's right to "retain reasonable control over TDS's design, construction and placement of adjacent structures on property owned or controlled by Ameritech Wisconsin."

Any concern that Ameritech may have regarding the safety of the design and construction of the collocation space is addressed by the FCC order and language proposed by Ameritech regarding safety and maintenance concerns is incorporated in the agreement. The additional language proposed by Ameritech contradicts the *Advanced Services Order*. This Panel awards the following language for section 4.1.4.1 of Appendix Collocation:

> *4.1.4.1. When space is legitimately exhausted inside an* ***SBC-13STATE*** *Eligible Structure,* ***SBC-13STATE*** *will permit CLEC to physically collocate in an Adjacent Structure (e.g. controlled environmental vaults, controlled environmental huts, or similar structures such as those used by* ***SBC-13STATE*** *to house telecommunications equipment) to the extent technically feasible.* ***SBC-13STATE*** *will permit CLEC to construct or otherwise procure such adjacent structure, subject to reasonable safety and maintenance requirements, zoning and other state and local regulations. CLEC will be responsible for securing the required licenses and permits, the required site preparations, and will retain responsibility for building and site maintenance associated with placing the Adjacent Structure.* ***SBC-13STATE*** *may reserve reasonable amounts of space adjacent to its Eligible Structure needed to expand its Eligible Structure to meet building growth requirements, provided that such reservation shall be administered on a non-discriminatory basis.* ***SBC-13STATE*** *will assign the location of the Designated Space where the Adjacent Structure will be placed.*

Issue TDS-70: What provisions should govern relocation of TDS Metrocom's collocated equipment?

(Appendix Collocation, Section 4.8)

A. Position of the parties.

Ameritech proposes language in section 4.8 of the collocation appendix that will provide that costs of relocation caused by circumstance beyond Ameritech's control which result in costs of occupancy that are excessive, in Ameritech's sole opinion, will be charged to CLEC.

TDS argues that Ameritech is attempting to charge CLEC's relocation costs when Ameritech has made an economic decision to do so.

B. Decision.

The language proposed by Ameritech is duplicative and unnecessary. If there is a circumstance beyond Ameritech's reasonable control that requires (per Ameritech determination) the relocation of a CLEC, regardless of the reason for relocation, it may so charge the CLEC. Adding the language that Ameritech has the sole discretion to determine whether circumstances beyond Ameritech's control result in costs that are excessive for continued collocation duplicates the previous provision by simply adding an example. Further, Ameritech admits that the language is only intended to limit the charge of costs to circumstances beyond Ameritech's control. Ameritech has not demonstrated the need for the inclusion of this language.

This Panel awards the language agreed to by the parties as well as the language proposed by Ameritech in the last sentence of sec. 4.8 as follows:

> *Relocation – In the event **SBC-13STATE** determines it necessary for Dedicated Collocation Space to be moved within the Eligible Structure in which the Dedicated Collocation Space is located or to another Eligible Structure, CLEC is required to do so. Such relocation shall be on a non-discriminatory basis, including relocation of SBC-13STATE'S own equipment. If such relocation arises from circumstances beyond the reasonable control of **SBC-13STATE**,*

including condemnation or government order or regulation, SBC-13STATE may charge CLEC, in the same manner as provided for in this Appendix, for the cost of preparing the new dedicated collocation space at the new location. Otherwise ***SBC-13STATE*** *shall be responsible for any reasonable preparation costs and any reasonable costs incurred by CLEC directly in connection with such relocation.*

Issue TDS-71: What documentation should Ameritech Wisconsin provide to TDS Metrocom if TDS Metrocom believes denial of collocation space is insupportable?

(Appendix Collocation, Sections 5.3.3.2 and 5.3.3.3)

A. Position of the parties.

TDS is requesting that it be provided with "all relevant documentation" from Ameritech regarding its collocation facilities. In the language proposed by TDS, they do not appear to make the provisioning of this documentation contingent upon a denial of collocation space.

Ameritech argues that it should not have to provide TDS with documentation that is highly confidential, not limited, and burdensome to supply.

B. Decision.

The language proposed by TDS is not limited and appears to require Ameritech to comply regardless of the circumstances. Even if the requirement is limited to instances where TDS has been denied collocation space, section 5.3.2 affords TDS the opportunity to contest the issue and the Commission, as a neutral party, will have access to the information described in order to make a determination regarding the validity of the denial.

This Panel awards the language agreed to by the parties and strikes the language proposed by TDS in sections 5.3.3.2 and 5.3.3.2.

Issue TDS-73: What type of response to request for physical collocation must be made by Ameritech Wisconsin?

(Appendix Collocation, Sections 5.3.4.1 et seq.)

A. Position of the parties.

See Issue TDS-71.

B. Decision.

Based on the discussion of Issue TDS-71, this Panel awards the language agreed to by the parties and strikes the language proposed by TDS in sections 5.3.4.1 et seq.

Issue TDS-76: What costs may Ameritech Wisconsin recover when removing obsolete equipment?

(Appendix Collocation, Section 5.11)

A. Position of the parties.

Both parties agree that CLEC's should only incur additional expenses for removal of obsolete equipment where a CLEC has made a request for the space. Further, both parties agree that TDS should not be required to pay expenses that Ameritech would have incurred anyway.

B. Decision.

The language agreed to by both parties accomplishes the results required by both parties. This Panel awards the language agreed to by both parties in section 5.11 of the collocation appendix as follows:

> *At the request of the Commission or CLEC, **SBC-13STATE** shall remove any obsolete and unused equipment (e.g., retired in-place") from its Premises. **SBC-13STATE** shall be permitted to recover the cost of removal and/or relocation of such equipment if **SBC-13STATE** incurs expenses that would not otherwise have been incurred (at the time of the request or subsequent thereto).*

Issue TDS-77: How much advance notice must Ameritech Wisconsin give before instituting restrictions on so-called "warehousing" of space?

(Appendix Collocation, Section 5.12)

A. Position of the parties.

Ameritech argues that the FCC order allowing ILECs to restrict "warehousing" of space is sufficient notice to the CLEC because it must first go through the commission to obtain such restriction. Ameritech contends that the language proposed by TDS requiring a 180 day notice before instituting any such restrictions is anticompetitive. Ameritech argues that TDS language allows TDS to effectively prevent other CLECs and new entrants from using space for at least six months.

TDS argues that without its proposed language Ameritech would be able to institute space "warehousing" restrictions on a moment's notice, giving TDS no time to plan for and implement the restriction.

B. Decision.

Both parties cite the FCC Order granting ILEC's the ability to restrict the "warehousing" of space. In that order, the FCC does not indicate that every restriction must be reviewed by a state commission; only those that involve maximum space limitations. Further, the FCC states in that order that an ILEC "may impose **reasonable** restrictions." 47 C.F.R 51.323(f)(6) (emphasis added).

This Panel believes that the "reasonable" language contained in the order prevents an ILEC from instituting limitations on "warehousing" of space without reasonable notice. Further, if that limitation is in the form of maximum space limitations, the required proof and subsequent determination of the commission will serve as notice to the CLEC of possible restrictions.

The Panel awards the language agreed to by both parties in section 5.12 of the collocation appendix, striking the language proposed by TDS.

Issue TDS-78: What provisions concerning the type of equipment that can be collocated should be included in the agreement?

(Appendix Collocation, Sections 6.1 to 6.8)

A. Position of the parties.

Ameritech argues that the language agreed to by both parties, referring to the rules of the FCC or state commission "may not provide sufficient clarity (and prevent future disputes) as to what types of equipment TDS may collocate on Ameritech Wisconsin's premises."

TDS argues that Ameritech's proposed language places the burden upon TDS to prove that proposed pieces of equipment for collocation meet the requirements of the Act rather than Ameritech having to prove they do not meet the requirements of the act.

B. Decision.

Both parties agree that the FCC's *Advanced Services Order*, 14 F.C.C.R. at 4786, ¶ 28 governs this issue. In that order, the FCC is specific as to the burden of proving equipment qualifications for collocation. The order provides specifically:

> Our existing rules, correctly read, require incumbent LECs to permit collocation of all equipment that is necessary for interconnection or access to unbundled network elements, regardless of whether such equipment includes a switching functionality, provides enhanced services capabilities, or offers other functionalities. Our rules obligate incumbent LECs to "permit the collocation of any type of equipment used for interconnection or access to unbundled network elements." Stated differently, an incumbent LEC may not refuse to permit collocation of any equipment that is "used or useful" for either interconnection or access to unbundled network elements, regardless of other functionalities inherent in such equipment. Rather, our rules require incumbent LECs to permit collocation of any equipment required by the statute unless they first "prove to the state commission that the equipment will not be actually used by the

> telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements." (footnotes omitted).

The Commission clearly intended the burden to be placed on the ILEC to prove that a particular piece of equipment does not meet the standards required by the act. Further, Ameritech's proposed language limits the type of equipment a CLEC may use before a determination is made by the state commission. This attempt to circumvent the process is inappropriate and in contravention of the Act.

This Panel awards the language in sections 6.1 to 6.8 of the Collocation Appendix as follows:

> *6.1. In accordance with Section 251(c)(6) of the Telecommunications Act, CLEC may collocate equipment "necessary for interconnection or access to unbundled network elements." For purposes of this section, "necessary" shall be as defined by the FCC or the Commission.*
> **[Section 6.2 is deleted in its entirety.]**
> *6.3. **SBC-13STATE** permits CLEC collocation, on a non-discriminatory basis, of complete pieces or units of equipment specified in the definition of "Advanced Services Equipment" in section 1.3.d of the SBC/Ameritech Merger Conditions.*
> **[Section 6.4 is deleted in its entirety.]**
> **[Section 6.5 is deleted in its entirety.]**
> *6.6. **SBC-13STATE** will not allow collocation of stand-alone switching equipment, equipment used solely for switching, or any enhanced services equipment. For purposes of this section, "stand-alone" is defined as any equipment that can perform switching independently of other switches or switching systems. "Stand-alone switching equipment" includes, but is not limited to, the following examples: (1) equipment with switching capabilities included in 47 C.F.R. section 51.319(c); (2) equipment that is used to obtain circuit switching capabilities, without reliance upon a host switch, regardless of other functionality that also may be combined in the equipment; (3) equipment that is used solely, fundamentally, or predominately for switching and does not meet any of the above-described categories of equipment that **SBC-13STATE** voluntarily allows to be collocated; and (4) equipment with the functionality of a class 4 or 5 switch including, without limitation, the following: Lucent Pathstar, 5E, 4E, or 1A switch; DMS 10, 100, 200, or 250 switch; Ericsson AXE-10 switch; Siemens EWSD; and any such switch combined with other functionality.*
> **[Section 6.7is deleted in its entirety.]**
> **[Section 6.8is deleted in its entirety.]**

Issue TDS-79: Should TDS Metrocom be required to submit a separate request for information as to Ameritech Wisconsin equipment located in a CO when collocation is denied on the basis of equipment safety standards? Should the information provided by Ameritech Wisconsin be limited to the CO for which collocation was requested?

(Appendix Collocation, Section 6.12)

A. Position of the parties.

TDS argues that it is Ameritech's duty to provide a list of Ameritech equipment placed within the CO since 1998 upon request by TDS. TDS argues that providing the information within 5 days of the denial will allow TDS the opportunity to determine whether or not to challenge the denial. TDS proposes language that requires Ameritech to provide this list for "any eligible premise. "

Ameritech argues that TDS' request assumes that TDS will challenge every denial. Ameritech proposes that TDS receive the information only upon request and only for those locations for which occupancy has been denied.

B. Decision.

Ameritech's analysis of the *Advanced Services Order* is clearly erroneous as it applies to whether a CLEC must request the information in writing. The FCC decided that the ILEC must provide the information upon denial, not upon CLEC request. The language incorporated into the federal rule is as follows:

> An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis

> for concluding why collocation of equipment not meeting this safety requirement would compromise network safety.

47 C.F.R. § 51.323(b).

There is no basis upon which Ameritech may claim that it is only required to provide this information upon the request of the CLEC. However, TDS' request for information relating to "any eligible premises" is also insupportable. Nowhere in the *Advanced Services Order* or federal rules does the FCC require that an ILEC provide the information above for each and every eligible CO, even when a CLEC has not requested collocation at those premises. In fact the *Advanced Services Order* specifies that the information must be provided for the "premises in question." *Advanced Services Order*, 14 F.C.C.R. at 4781. Unless TDS requests collocation at all COs, Ameritech is only required to provide the information for the specific locations where TDS requested collocation space and was denied.

This Panel awards the following language for section 6.12 of the Collocation Appendix:

> *In the event that **SBC-13STATE** denies Collocation of Collocator's equipment, citing minimum safety standards, **SBC-13STATE** will provide within five (5) business days of the denial a list of **SBC-13STATE** equipment placed since January 1, 1998 within the network areas of any Eligible Premise for which Collocation was denied together with an affidavit attesting that all of such **SBC-13STATE** equipment met or exceeded the then current minimum safety standards when such equipment was placed in the Eligible Premise.*

Issue TDS-80: Should TDS be permitted to collocate equipment pending a dispute about whether such equipment may lawfully be collocated?

(Appendix Collocation, Sections 6.13 and 6.13.1)

A. Position of the parties.

Ameritech argues that TDS should not be allowed to collocate equipment that Ameritech has determined is not "necessary" for collocation or does not meet safety standards. Ameritech

argues that to allow TDS to collocate prior to an outcome to the dispute in TDS' favor will not maintain the status quo and TDS would be allowed to collocate potentially noncompliant equipment.

TDS argues that the FCC has placed the burden on Ameritech to prove that a piece of equipment is unnecessary before it can deny or prevent collocation and that the language proposed by Ameritech tries to circumvent this burden.

B. Decision.

A requirement that provides that a CLEC must not collocate equipment that Ameritech has determined is unnecessary is an invitation for Ameritech to make such determinations in all cases where it seeks to delay or prevent a CLEC from collocating equipment, with no consequences for such delaying tactics. Based on the analysis of Issue TDS-78, where the FCC clearly places the burden upon Ameritech to demonstrate that the equipment is unnecessary, and not withstanding the language that appears to have been agreed to in section 6.13, this Panel awards the following language for sections 6.13 and sections 6.13.1:

> 6.13. ~~In the event Collocator submits an application requesting collocation of certain equipment and **SBC-13STATE** determines that such equipment is not necessary for interconnection or access to UNEs or does not meet the minimum safety standards or any other requirements of this Appendix, the Collocator must not collocate the equipment. If Collocator disputes such determination by **SBC-13STATE**, Collocator may not collocate such equipment unless and until the dispute is resolved in its favor. If **SBC-13STATE** determines that Collocator has already collocated equipment which is not necessary for interconnection or access to UNEs or does not meet the minimum safety requirements or any other requirements of this Appendix, the Collocator must remove the equipment from the collocation space within ten (10) written notice from **SBC-13STATE**. Collocator will be responsible for the removal and all resulting damages. If Collocator disputes such determination, Collocator must remove such equipment pending the resolution of the dispute. If the Parties do not resolve the dispute, **SBC-13STATE** or Collocator may file a complaint at the Commission seeking a formal resolution of the dispute.~~

~~6.13.1~~ *In the event Collocator submits an application requesting collocation of certain equipment and* ***SBC-13STATE*** *determines that such equipment is not necessary for interconnection or access to UNEs, Collocator may collocate the equipment, provided Collocator timely disputes such determination by* ***SBC-13STATE****, unless and until the dispute is resolved. If the Parties do not resolve the dispute,* ***SBC-13STATE*** *or Collocator may file a complaint at the Commission seeking a formal resolution of the dispute. If Collocator has already collocated equipment and a dispute has not been timely filed or the dispute is resolved in favor of* ***SBC-13STATE****, the Collocator must remove the equipment from the collocation space within ten (10) written notice from* ***SBC-13STATE****. Collocator will be responsible for the removal and all resulting damages.*

Issue TDS-81: Should TDS Metrocom be permitted to occupy collocation space before TDS Metrocom pays all non-recurring charges due for the space?

(Appendix Collocation, Section 7.6)

A. Position of the parties.

Ameritech contends that TDS should be required to make all payments for nonrecurring charges before TDS is permitted to occupy the collocation space. Ameritech proposes that, if TDS is concerned about receiving a bill, the language that Ameritech proposes is still appropriate if the Panel makes payment contingent upon receiving a bill

TDS is concerned that it will not receive a bill for the final payment in a timely manner delaying occupation of the collocation due to no fault of itsr own. Otherwise, TDS agrees that it should pay all non-recurring costs before occupancy.

B. Decision.

Both parties agree that TDS should pay all non-recurring costs for collocation space before it takes occupancy provided TDS has received the bill for such costs. The Panel awards the following language for section 7.6 of Appendix Collocation based on their agreement on the issue as follows:

*Occupancy Conditioned on Payment - **SBC-13STATE** shall not permit CLEC to have access to the dedicated collocation space for any purpose other than inspection during construction of CLEC's dedicated physical collocation space until the space is completed, **SBC-13STATE** has timely billed and **SBC-13STATE** is in receipt of complete payment of the Preparation Charge and any Custom Work charges and/or applicable COBO. If the space is completed and timely billing has not been made, **SBC-13STATE** shall permit CLEC to have access to the dedicated collocation space upon receipt of the first two payments of the Preparation Charge and any Custom Work charges and/or applicable COBO with final payment due upon receipt of the bill.*

Issue TDS-84: Should TDS Metrocom be required to provide a list of equipment to be collocated with its initial application?

(Appendix collocation, Section 8.3)

A. Position of the parties.

Ameritech proposes language that TDS must supply a complete list of equipment to be used in a collocation space with its application for the space. Ameritech further requires that the CLEC warrant and represent that the list provided with the application is complete and accurate. Ameritech argues that this information is necessary for purposes of determining HVAC, electrical, and other safety requirements.

TDS argues that it can only provide a list of proposed equipment when it has the exact dimensions of the space to be provided because different equipment may be required depending on the configuration of the space to be provided.

B. Decision.

Because there is no location on the application for TDS to specify the dimensions of the space required, some flexibility in the listed equipment must be allowed in order to accommodate the space offered by Ameritech in response to a request for collocation. (Lawson

Tr. Vol. 1, p. 160). However, Ameritech also maintains an interest in monitoring any particular piece of equipment proposed to be collocated by TDS.

The Panel awards the following language in section 8.3 of the Collocation appendix to address the interests of both parties:

> *A list of proposed CLEC Telecom Equipment that will be placed within the Dedicated Space shall be set forth on the CLEC's Physical Collocation application, which includes associated power requirements, floor loading, and heat release of each piece of CLEC Telecom Equipment. After CLEC has information concerning the exact Dedicated Space to be made available, CLEC will provide a complete and accurate list of such CLEC Telecom Equipment for review. CLEC shall not place or leave any other equipment or facilities within the Dedicated Space without the express written consent of* ***SBC-13STATE****.*

Issue TDS-85: What process should be used and what charges should be imposed if TDS Metrocom changes the equipment it intends to collocate?

(Appendix collocation, Section 8.4)

A. Position of the parties.

Ameritech proposes the following language for section 8.4 of Appendix Collocation:

> In the event that subsequent to the submission of the Physical Collocation application and its list of CLEC Telecom Equipment with the required technical information, CLEC desires to place in the Dedicated Space any telecommunications equipment or such ancillary telecommunications facilities not so set forth in the Physical Collocation application, CLEC shall furnish to **SBC-13STATE** a new Physical Collocation application and any Applicable charges to cover such equipment or facilities. Thereafter, consistent with its obligations under the Act and applicable FCC and Commission rules, orders, and awards, **SBC-13STATE** may provide such written consent or may condition any such consent on any additional charges arising from the request, including any applicable fees and any additional requirements such as power and environmental requirements for such requested telecommunications equipment and/or facilities. Upon the execution by both **SBC-13STATE** and CLEC of a final list and description and receipt by **SBC-13STATE** of payment of any applicable non-recurring charges, the Physical Collocation arrangement shall be deemed to have been amended and such requested telecommunications equipment and/or facilities shall be included within "CLEC Telecom Equipment."

TDS objects to portions of the proposed text. TDS would word the first two sentences of this section as follows:

> In the event that subsequent to the submission of the Physical Collocation application and its list of CLEC Telecom Equipment with the required technical information, CLEC desires to place in the Dedicated Space any telecommunications equipment or such ancillary telecommunications facilities not so set forth in the current equipment list, CLEC shall furnish to **SBC-13STATE** a revised equipment list. **SBC-13STATE** must within 10 days provide CLEC with notice of any additional charges arising from the request, including any applicable fees and any additional requirements such as power and environmental requirements for such requested telecommunications equipment and/or facilities.

B. Decision.

Ameritech is entitled to charge for making additional accommodations if TDS decides to deviate from the final equipment list provided to Ameritech after it has the specification of the collocation space to be provided. The Panel awards the language for section 8.4 of the Collocation Appendix as follows:

> *In the event that subsequent to the submission of the Physical Collocation application and its complete and accurate list of CLEC Telecom Equipment with the required technical information, CLEC desires to place in the Dedicated Space any telecommunications equipment or such ancillary telecommunications facilities not so set forth in the complete and accurate list provided by the CLEC pursuant to sec. 8.3, CLEC shall furnish to* ***SBC-13STATE*** *a new Physical Collocation application and any Applicable charges to cover such equipment or facilities. Thereafter, consistent with its obligations under the Act and applicable FCC and Commission rules, orders, and awards,* ***SBC-13STATE*** *may provide such written consent or may condition any such consent on any additional charges arising from the request, including any applicable fees and any additional requirements such as power and environmental requirements for such requested telecommunications equipment and/or facilities. Upon the execution by both* ***SBC-13STATE*** *and CLEC of a final list and description and receipt by* ***SBC-13STATE*** *of payment of any applicable non-recurring charges, the Physical Collocation arrangement shall be deemed to have been amended and such requested telecommunications equipment and/or facilities shall be included within "CLEC Telecom Equipment."*

Issue TDS-86: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix Collocation, Sections 8.10 – 8.12)

For the reasons discussed in Issue TDS-20 above, the Panel awards the language proposed by Ameritech. The Panel simply finds that on balance the risk of harm that may follow permitting Ameritech to unilaterally revise its internal documents does not warrant the alternative approval process proposed by TDS.

To the extent that TDS proposes to replace some or all of the language with an agreement termed, *Change Management Process,* the Panel declines to do so. However, nothing in this award prevents the parties from enforcing such an agreement using the remedies adopted in that proceeding.

The Panel awards the following language for sections 8.10 and 8.11 of the Appendix Collocation:

> *8.10. This Appendix and the Collocation provided hereunder is made available subject to and in accordance with Sections 8.10.1, 8.10.2, 8.10.3, 8.10.4, and 8.10.5. CLEC shall strictly observe and abide by each in* ***SBC-13STATE****'s.*
> *8.10.1. SBC Local Exchange Carriers TP 76200MP, Network Equipment: Power, Grounding, Environmental, and Physical Design Requirements, and any successor document(s), including as such may be modified at any time and from time to time;*
> *8.10.2.* ***SBC-13STATE****'s most current Interconnector's Collocation Services Handbook and any successor document(s), as may be modified from time to time as set forth below.*
> *8.10.3. TP 76300MP, SBC Local Exchange Carriers Installation Requirements, and any successor documents should be followed in installing network equipment, and facilities within* ***SBC-13STATE*** *central offices and may be modified from time to time.*
> *8.10.4. Any statutory and/or regulatory requirements in effect at the time of the submission of the Physical Collocation application or that subsequently become effective and then when effective.*

8.10.5. The Interconnector's Collocation Services Handbook, TP 76300MP and the TP 76200MP Standards are not incorporated herein but are available on the appropriate SBC ILEC's Collocation Internet site.
8.11. If the Interconnector's Collocation Services Handbook, Collocation website(s) or the TP 76300MP, is modified subsequent to the effective date of this agreement from the attached, the following shall apply:
8.11.1. If a modification is made after the date on which CLEC has or orders a Physical Collocation arrangement, ***SBC-13STATE*** *shall provide CLEC with those modifications or with revised versions of such, listing or noting the modifications as appropriate. Any such modification shall become effective and thereafter applicable under this Agreement thirty (30) days after such amendment is released by* ***SBC-13STATE****, except for those specific amendments to which CLEC objects to within thirty (30) days of receipt, providing therewith an explanation for each such objection. The Parties shall pursue such objections informally with each other and, if not resolved within forty-five (45) days, either Party will have fourteen (14) days to invoke the dispute resolution procedures applicable to this Agreement. If neither Party invokes those procedures, the modification is deemed effective and applicable.*
8.11.2. If a modification is made after this Appendix becomes part of an effective "Statement of Generally Available Terms and Conditions" or similar document for ***SBC-13STATE*** *(and the modification has not been included in a change to that "Statement" or this Appendix), then* ***SBC-13STATE*** *will provide CLEC with a copy of such modifications or the most recent version or revision of the particular document promptly after receipt of CLEC's physical collocation application. Any CLEC objection to those modifications must be received by* ***SBC-13STATE*** *by the thirtieth (30^{th}) day after their receipt by CLEC. Thereafter, the same process and procedure (including timelines) for resolving any objection made under Section 8.11.1 shall apply.*
8.11.3. Notwithstanding Sections 8.11.1 and/or 8.11.2, any modification made to address situations potentially harmful to ***SBC-13STATE****'s or another's network, equipment, or facilities, the Eligible Structure, the Dedicated Space, or to comply with statutory or regulatory requirements shall become effective immediately and shall not be subject to objection.* ***SBC-13STATE*** *will immediately notify CLEC of any such modification.*

Issue TDS-88: When should TDS Metrocom be required to remove its equipment and what should the conditions of such removal be?

(Appendix Collocation, Section 9.5)

A. Position of the parties.

Ameritech argues that TDS should be required to remove its equipment within 30 days of discontinuance of the use of that equipment and should bear the costs of such removal. Ameritech cites its obligation to serve other CLECs in a timely manner as a reason for requiring TDS to remove its unused equipment.

TDS contends that ILECs and specifically Ameritech continue to make it difficult for CLECs to collocate and any claims that suggest that they make it easier are unfounded. TDS argues that Ameritech's proposed language does not address the situation where another CLEC is requesting space and that the language it proposes protects it and other CLECs from arbitrary deadlines imposed by Ameritech.

B. Decision.

TDS has failed to demonstrate that the 30 days proposed by Ameritech is in any way designed to make it more difficult for CLECs to obtain collocation space. Further, TDS, in its own proposed language suggests that Ameritech be allowed to remove unused equipment within a "reasonable" amount of time without explaining why 30 days is not reasonable. TDS' primary concern appears to be the lack of notice. In her testimony on behalf of Ameritech, Ms. Fuentes indicated that removal of equipment under this proposed section 9.5 would occur only after notification (Fuentes Direct Tr. Vol. 1, p 194). Ms. Fuentes then appears to indicate that there would not be notification in this section. (Fuentes Cross examination Tr. Vol. 1, p. 215).

Finally, when Ms. Fuentes gave testimony on redirect, she indicated that "discontinuance of use" referred to the space and not the equipment. Ms. Fuentes also indicated that if there was any equipment in that space Ameritech would not even be able to enter the cage to remove it. (Fuentes Redirect, Tr. Vol. 1, pp. 224-226) If this is in fact the case, the language allowing Ameritech to remove equipment is not applicable.

Both parties have failed to clarify the issues and the positions each are seeking to promote. Based on the proposed language of the agreement and the testimony of the parties, there are two separate situations that sections 9.5 and 10.10 would address. The second, section 10.10 addresses the situation wherein a CLEC fails to occupy a space it has requested. The first, section 9.5, addresses the situation wherein the CLEC has already been using the requested space and ceases to do so, leaving equipment behind.

In section 9.5, it is reasonable to expect that if a CLEC has abandoned use of the space it should be required to remove its unused equipment or compensate Ameritech if Ameritech must remove it. These terms should apply whether or not another CLEC has made a request for the space in order to avoid any delay in providing the space to someone who may request it, thereby promoting competition. However, TDS maintains an interest in the determination of whether its space is in use and as such the term "use" should be defined as interconnection as agreed to by both parties. Further, TDS should be notified of the removal with 30-day notice from the date of discontinuance of use by Ameritech of its intention to remove the equipment.

The Panel awards the following language in section 9.5 of the Collocation Appendix:

> *If CLEC fails to remove its equipment and facilities from the Dedicated Space within thirty (30) days notice of discontinuance of use of the collocation space,* ***SBC-13STATE*** *may perform the removal and shall charge CLEC for any materials used in any such removal, and the time spent on such removal at the then-applicable hourly rate for*

*custom work. Further, in addition to the other provisions herein, CLEC shall indemnify and hold **SBC-13STATE** harmless from any and all claims for expenses, fees, or other costs associated with any such removal by **SBC-13STATE**except to the extent the basis for such claims, expenses, fees, or other costs arose directly from the willful misconduct or gross negligence of SBC-13State, its employees or agents. For purposes of this Section, the use of collocation space is considered to be discontinued when it is no longer used for interconnection as defined by section 10.10 herein.*

Issue TDS-89: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix Collocation, Section 9.6.6)

For the reasons stated in Issue TDS-20 above, the Panel awards the following language proposed by Ameritech for section 9.6.6 of Appendix Collocation:

*Any power cabling required beyond the **SBC-13STATE** provided Collocation Interconnection Power Panel (CIPP) to Collocator's equipment. **SBC-13STATE** requires that a Collocation Interconnect Power Panel (CIPP) must be used when the Physical Collocation arrangement is not served from **SBC-13STATE's** BDFB. No CIPP is required for 20, 40 or 50 amp arrangements which are served from **SBC-13STATE's** BDFB. The CIPPs are designed to provide 20, 40 , 50 or 100 (maximum) amp redundant increments of DC power. The CIPP is always required for 100 amp or greater power arrangements. The Collocator will furnish and install the (CIPP) within a Collocator-provided equipment bay designated by Collocator. The CIPP must meet TP 76200 MP Level 1 requirements.*

Issue TDS-90: What provisions should govern application and construction intervals for collocation space?

(Appendix Collocation, Section 10.1)

A. Position of the parties.

Ameritech proposes language that will require TDS to pay 50% of the non-recurring charges within 7 days of Ameritech's granting of TDS' collocation request. Ameritech further argues that the FCC has allowed for deviations from the required 90 days intervals and it is requesting such a deviation in instances where TDS makes multiple applications for collocation space in a short period of time or where expansion or construction of power to the collocation area has not yet been made.

TDS argues that 21 days is a necessary and reasonable amount of time within which to submit payment to Ameritech for a collocation request. TDS objects to Ameritech's request for a deviation in the interval ordered by the FCC. TDS argues that such a deviation is unnecessary and constitutes an attempt to delay provisioning of collocation space to CLECs in direct contravention to the FCC Order.

B. Decision.

TDS has demonstrated that it is able and willing to make payment within 11 days (or less) of a request for payment, even in a situation where they were unaware of the final costs before the request for payment is made. (See Exhibits 1-4 indicating TDS' payment within a respective 11 days and 4 days of receipt of invoices.) Section 7.5.1 already protects Ameritech from having to begin the process of site preparation before it has received 50% of the Central Office Build Out (COBO) fee.

Ameritech has provided testimony that "power manufacturers and vendors need 180 days for both a major power expansion or a new power plant." (Fergusson Direct, Tr. Vol. 1, p. 248) This precludes Ameritech from provisioning collocation space that is in need of such expansion or construction before the power supplier has completed its work. In citing the specific requirements of power vendors, Ameritech has demonstrated a specific need to extend the interval in this specific circumstance.

Ameritech has not demonstrated that there is a specific need to extend the 90 day provisioning interval when there are multiple applications for collocation space. Ameritech cites the *Order on Reconsideration* where the FCC acknowledges the possible affect of a large volume of simultaneous applications. The relevant section of the *Order on Reconsideration*, however, refers only to the interval as it applies to granting an application and not the actual provisioning of collocation space. It reads:

> In the *Advanced Services First Report and Order*, we stated that ten days constitutes a reasonable period within which an incumbent LEC should inform a new entrant whether its collocation application has been accepted or denied. Based on the record before us, we believe that an incumbent LEC has had ample time since the enactment of section 251(c)(6) to develop internal procedures sufficient to meet this deadline, absent the receipt of an extraordinary number of complex collocation applications within a limited time frame. We therefore require that, where neither the state nor the parties to an interconnection agreement set a different deadline, an incumbent LEC must tell the requesting telecommunications carrier whether a collocation application has been accepted or denied within ten calendar days after receiving the application.

Order on Reconsideration and Second Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, Fifth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, 15 F.C.C.R. 17806 ¶ 24 (Aug. 10, 2000).

Absent specific reasons for the need to extend the collocation provisioning interval, this Panel agrees with the FCC that all barriers to competition in provisioning of collocation space should be removed where possible. Each party agrees that the FCC has determined that 90 days is the standard interval within which an ILEC must provision collocation space. Ameritech also admits that it is within the states commission's discretion to extend or shorten this interval. Ameritech has not provided information to support that the provisioning of more than 5 applications merits an increase in the interval set by the FCC. Pursuant to the discussion above, this Panel awards the following language in section 10.1 of the collocation appendix:

> *The construction interval relates to the period in which **SBC-13STATE** shall construct and deliver to the Collocator the requested space. The construction interval begins on the date **SBC-13STATE** receives an accurate and complete Physical Collocation Application from the Collocator. The Collocator must provide the **SBC-13STATE**, within seven (7) days from the date of notification granting the application request, a confirmatory response in writing to continue construction and 50% payment of non-recurring charges (unless payment was received with application) within fourteen (14) days of the date of notification or the construction interval provided below will not commence until such time as **SBC-13STATE** has received such response and payment. If the Collocator has not provided the **SBC-13STATE** such response and payment by the twelfth (12) day after the date **SBC-13STATE** notified Collocator its request has been granted, the application will be canceled. Dedicated space is reserved upon **SBC-13STATE's** receipt of the confirmatory response in writing from the Collocator with applicable fees. **SBC-13STATE** will complete construction of all Active Collocation Space requests for Physical Collocation within 90 days.*

Issue TDS-91: Should there be a different interval within which Ameritech Wisconsin must fulfill a collocation request when power has not yet been provided in the collocation area?

(Appendix Collocation, Section 10.3)

A. Position of the parties.

See issue 90.

B. Decision.

Based on the discussion under issue TDS - 90, this Panel awards the language proposed by Ameritech in section 10.3 of the collocation appendix as follows:

> *Unless otherwise mutually agreed to by the Parties in writing, where power does not exist or in Other Central Office Space, **SBC-13STATE** will complete construction of requests for caged, shared, or cageless collocation within one hundred eighty (180) calendar days from receipt of Collocator's acceptance of the quotation or initial COBO (Central Office Build Out).*

Issue TDS-92: Should there be a different interval within which Ameritech Wisconsin must fulfill a collocation request when TDS Metrocom submits a large number of applications?

(Appendix Collocation, Section 10.4)

A. Position of the parties.

See issue 90.

B. Decision.

Based on the discussion under issue TDS - 90, the Panel strikes the language proposed by Ameritech in section 10.4 of the collocation appendix as follows:

> ~~10.4. Should the Collocator submit six (6) or more applications within five (5) days the provisioning interval will be increased by five (5) days for every five (5) additional applications.~~

Issue TDS-93: Intervals for Collocation. Should TDS Metrocom pay additional application fees for amending a collocation application?

(Appendix Collocation, Section 10.5)

A. Position of the parties.

Ameritech argues that it "may incur additional costs when a CLEC amends its collocation application." (Ameritech Br. 101) Ameritech contends that it should be able to recover these costs from the CLEC. In fact, Ameritech claims that TDS is not opposed to being charged for costs actually incurred by Ameritech in addressing an amended collocation application.

TDS argues that simple amendments to the application should not generate additional fees. However, TDS indicates, in the record, that actual costs incurred Ameritech can be charged to TDS. (Lawson Direct, Tr. Vol. 1, p. 52).

B. Decision.

There is no reference in the proposed language of either party that an amendment to a collocation application would constitute a new application and thus new application fees. However, both parties appear to agree that if TDS amends an application that generates additional costs for Ameritech, Ameritech is entitled to recover those costs. Pursuant to the discussion above and under Issue TDS-90 this Panel awards the following language in section 10.5 of the collocation appendix as follows:

> *Any revision(s) submitted by the Collocator on an existing Physical Collocation Application that was assigned an interval from 10.1 and prior to day fifteen (15) of the delivery interval will be subject to review by **SBC-13STATE**. A new delivery interval due date may be established when adding or changing telecommunications equipment, additional power requirements, interconnection termination additions and/or changes, and additional bay space requirements. The Collocator will be notified by **SBC-13STATE** if a new interval is required. The extension will be no longer than reasonably necessary, and in any event will be non discriminatory with respect to extensions for placement of SBC's own equipment and that of its affiliates and any other CLEC Any revision(s)*

*submitted by a Collocator on an existing Physical Collocation Application past business day fifteen (15) of the delivery interval due date, the Collocator will be notified by **SBC-13STATE** that a new interval has been established for the Physical Collocation Application. The interval date will start on the date the revision(s) is received. The Collocator may also be required to pay additional costs incurred, if applicable.*

Issue TDS-94: Should there be a different interval and additional non-recurring charge for augments to collocation arrangements?

(Appendix Collocation, Sections 10.6 and 10.7)

A. Position of the parties.

Ameritech proposes language that provides for shorter provisioning intervals for specific cabling augment applications and requires payment of the application fee and 50% of the nonrecurring charges for the augment before work begins. Ameritech's proposed language does not include 600 pair cabling in its shortened interval offering because Ameritech contends it cannot provision that technology in the same amount of time as 200 pair cabling because of the demand for more space and construction.

TDS argues that it should not have to pay additional application fees where Ameritech has not incurred additional costs to provide augments. TDS also argues that it should not have to pay 50% of the nonrecurring fees up front because a delay in construction may occur if billing is not timely.

B. Decision.

The language to which both parties have agreed indicates that an application for augmentation must be made in order for the provisioning intervals in this section to apply. Clearly, an application for augmented service will need to be reviewed, analyzed and planned. To the extent that Ameritech incurs costs for such preparation, they are entitled to recover those

costs from TDS. While TDS refers to Issue TDS-85 with respect to the costs of augments, this Panel is not convinced that this is the same situation. Augmentation appears to occur after the initial collocation application has been made without a request for the cabling referred to in section 10.6 and 10.7 of the Collocation Appendix. Because both parties have agreed that a separate application must be submitted for this service a separate application fee may apply to each.

Ameritech's requirement that TDS pay 50% of the nonrecurring charges at the time of application does not take into consideration that TDS will not know those amounts at the time of application. Since this is a separate application as agreed to by both parties, the payment arrangements should remain consistent with other applications. Finally, TDS appears to abandon the issue that give rise to the disputed language in section 10.6 of the Collocation Appendix dealing with the 600 pair cabling.(TDS Br. 143) For these reasons and the discussion under issue TDS – 90, this Panel awards the following language in sections 10.6 and 10.7 of the Collocation Appendix:

> *10.6. **SBC-13STATE** will provide reduced construction intervals for Collocators that request the following interconnection cabling Augments. The Collocator must submit a completed Physical Collocation Application. For this reduced construction interval to apply, this application must include an up-front payment of the Application Fee and payment of fifty percent (50%) of all applicable non-recurring charges within fourteen days (14) of the notification of the granting of the application. In addition, the application must include an accurate front equipment view (rack elevation drawing) specifying bay(s) for the Collocator's point of termination for the requested cabling. Physical Collocation Application(s) received with the up-front payment and meeting the criteria below will not require a quote or response and the construction interval will not exceed sixty (60) Calendar days.*
>
> - *84 DS1 connections and/or*
> - *48 DS3 connections and/or*
> - *200 ~~600~~ Copper (shielded or nonshielded) cable pair connections*
> - *12 fiber connections*

These Augments will apply only when the Collocator provides a complete and accurate Physical Collocation Application and the applicable fees. The job must be an Augment for an existing Physical Collocation arrangement and consist only of connections listed above.
10.7. For Augments in which the Collocator requests power that exceeds current capacity ratings or augments that require placement of additional cable racks within the Active Central Office space, the construction interval will not exceed ninety (90) calendar days from receipt of accurate and complete application for such augment along with the Application Fee and payment of fifty percent (50%) of all applicable nonrecurring charges within fourteen (14) days of notification of granting of the application. All other augments will follow normal construction intervals.

Issue TDS-95: When and under what terms and conditions must TDS Metrocom relinquish collocation space?

(Appendix Collocation, Section 10.10)

A. Position of the parties.

Ameritech argues that allowing TDS' proposed language prevents Ameritech from provisioning unused/abandoned space to CLECs within a reasonable time. Ameritech contends that TDS' proposal effectively ties up collocation space (even where there is an application from another CLEC) for 300 days.

TDS argues that Ameritech's proposal is an "arbitrary cutoff date" without regard for CLECs circumstances or demand for the space. TDS argues that its proposal balances other CLECs need for space by conditioning TDS' relinquishment of that space on evidence of demand (completed application and fee) by another CLEC while maintaining TDS' interest in occupancy and use of the space

B. Decision.

Ameritech is required to provision collocation space within a 90 day interval after application by a CLEC. If CLECs are allowed to occupy space without using it, and further

allowed to prolong the time it takes for Ameritech to remove the CLEC from the unused space, Ameritech will be in a position where it cannot fulfill its obligations. The language proposed by Ameritech provides 180 days for a CLEC to begin to use the space it has been provided. After this time has passed, it is reasonable that, after notification to the CLEC, Ameritech take applications for this space and the interval for provisioning begins to toll. This means that the CLEC that has not begun to use this space in a timely manner must use it or relinquish it in an amount of time that would allow Ameritech to provision the other CLEC requesting space.

Further, TDS' proposal guarantees a delay of 90 days in relinquishing the space even after Ameritech has a legitimate request for the space. This is unreasonable. Finally, there is no reason to demand that TDS not relinquish space that it has had ample opportunity to use and has failed to do so. To allow a CLEC to do this would effectively prevent others from competing in the market. In the interest of removing barriers to competition this Panel awards the following language in section 10.10 of the Collocation Appendix:

> *CLEC will, whenever possible, place their telecom equipment in the dedicated space within 30 calendar days of space turnover. CLEC must complete placement of CLEC Telecom Equipment in the Dedicated Space and interconnect to SBC-13STATE's network or to its unbundled network elements within one hundred eighty (180) calendar days after space turnover. If CLEC fails to do so, SBC-13STATE may, upon notice, terminate that Physical Collocation arrangement, and CLEC shall be liable in an amount equal to the unpaid balance of the charges due under and, further, shall continue to be bound by the provisions of this Appendix, the terms or context of which indicate continued viability or applicability beyond termination. For purposes of this Section, CLEC Telecom Equipment is considered to be interconnected when physically connected to SBC-13STATE's network or a SBC-13STATE unbundled network element for the purpose of CLEC providing a telecommunications service. This section shall not apply where interconnection is delayed for reasons beyond CLEC's control and CLEC has notified SBC and presented a reasonable schedule for future interconnection.*

Issue TDS-96: Should TDS Metrocom be permitted to increase the size of its collocation space when it is using less than 60% of the space it already has?

(Appendix Collocation, Section 10.11)

A. Position of the parties.

Ameritech argues that TDS' proposed language is an attempt to monopolize collocation space it does not use or intend to use.

TDS argues that Ameritech has not demonstrated the need to restrict TDS' ability to increase the size of its collocation space.

B. Decision.

Under Issue TDS-95 this Panel awarded the language proposed by Ameritech because it reflected a policy to allow other CLEC's the ability to enter the market without a substantial delay caused by another CLEC's refusal to use the space it was provided. Given the resolution of that issue in favor of Ameritech, this Panel cannot support restriction of a CLEC's ability to obtain collocation space it does plan to use. The resolution of the previous issue in Ameritech's favor should satisfy Ameritech that TDS will not be able to obtain space for "warehousing" without consequence. Further, if a CLEC has several applications close together, but staggered, it may effectively be prevented from obtaining more space because it has not yet put existing space into use due to preparation, planning or other factors that do not indicate an intention to "warehouse" it.

In the interest of removing barriers to competition this Panel awards the language proposed by TDS in section 10.11 of the Collocation Appendix as follows:

> ***SBC-13STATE*** *shall allow CLEC to augment its collocation space when space is available.*

Issue TDS-98: If Ameritech Wisconsin plans to close a location, may Ameritech Wisconsin require TDS Metrocom to vacate the space before Ameritech Wisconsin or its affiliates?

(Appendix Collocation, Section 12.3)

A. Position of the parties.

Ameritech's position is that TDS is requesting preferential treatment above that available to other CLECs in violation of the non-discriminatory provisions of the Act. Further, Ameritech argues that because it manages a central office rather than collocates, Ameritech is in a different position than the CLEC and should be afforded consideration that it may have to perform other functions in that premise.

TDS argues that the language proposed by Ameritech does not reflect a non-discriminatory method of equipment removal once a location is closing.

B. Decision.

This section of the agreement makes no reference to removal of equipment or use of equipment. However, to the extent that decisions are made regarding the termination of the collocation arrangement, such decisions should be made on a non-discriminatory basis. This Panel awards the following language in section 12.3 of the Collocation Appendix:

> *In the event that the Eligible Structure shall be so damaged by fire or other* ***casualty*** *that closing, or demolition thereof shall be necessary then, notwithstanding that the Dedicated Space may be unaffected thereby,* ***SBC-13STATE****, may terminate any Physical Collocation arrangement in that Eligible Structure by giving CLEC ten (10) days prior written notice within thirty (30) days following the date of such occurrence*

Issue TDS-100: Should Ameritech Wisconsin be proportionately liable for damages it jointly causes with third parties.

(Appendix Collocation, Section 14.2)

A. Position of the parties.

Ameritech argues that there is adequate incentive for Ameritech to safeguard the CLECs' collocation space against harm from third parties and that TDS' proposed language is unnecessary. Further, Ameritech argues that it should not be held liable for the losses caused by a third party.

TDS proposes language that would make Ameritech responsible only for damages to the extent that Ameritech contributed to those losses.

B. Decision.

Despite Ameritech's contention that there is ample protection for CLEC's for damages caused by third parties, this is not the situation that TDS seeks to address with this language. Further, Ameritech attempts, with its own proposed language, to absolve itself from liability even where it has jointly contributed to losses to TDS. Ameritech implies that it is an impossibility for Ameritech and a third party to be jointly responsible for damages. The Panel does not believe this is correct.

The Panel awards the language proposed by TDS in section 14.2 of the Collocation Appendix.

Issue TDS-101: How much notice should Ameritech Wisconsin be required to give prior to a major construction project?

(Appendix Collocation, Section 17.1)

A. Position of the parties.

Ameritech proposes that it provide five (5) days notice to CLEC for major construction projects. Ameritech argues that this gives it the opportunity to schedule projects in a timely manner.

TDS proposes language that would require Ameritech to give TDS twenty (20) days notice before construction. TDS argues that Ameritech has not demonstrated that the 20 days it proposes is unreasonable and that Ameritech's own documents reference a 20-day notice interval.

B. Decision.

Because each party has demonstrated that the need for adequate notice and timely scheduling of construction projects, this Panel awards a compromise between the two proposed notice schedules as follows:

> *17.1. Except in emergency situations,* ***SBC-13STATE*** *shall provide CLEC with written notice ~~five (5)twenty (20)~~ ten (10)business days prior to those instances where* ***SBC-13STATE*** *or its subcontractors may be undertaking a major construction project in the general area of the Dedicated Space or in the general area of the AC and DC power plants which support the Dedicated Space.*

Issue TDS-102: How much notice should Ameritech Wisconsin be required to give prior to scheduled AC or DC power work?

(Appendix Collocation, Section 17.3)

A. Position of the parties.

Ameritech proposes that it provide ten (10) days notice to CLEC for AC or DC power work. Ameritech argues that this gives it the opportunity to schedule projects in a timely manner.

TDS proposes language that would require Ameritech to give TDS twenty (20) days notice AC or DC power work. TDS argues that Ameritech has not demonstrated that the 20 days it proposes is unreasonable and that Ameritech's own documents reference a 20-day notice interval.

B. Decision.

For the reasons discussed under issue TDS 101 the Panel awards the language in section 17.3 Collocation Appendix as follows:

> *17.3 **SBC-13STATE** will provide CLEC with written notification within ~~ten (10)twenty (20)~~ fifteen (15) business days of any scheduled AC or DC power work or related activity in the Eligible Structure that will cause or has the risk of causing an outage or any type of power disruption to CLEC Telecom Equipment. SBC-13STATE will provide CLEC with the alternate plan to provide power in the case of such outage. If SBC does not have an alternate plan, SBC will make reasonable accommodations to allow CLEC to provide alternate power. All such work will be planned and executed in a manner that is non-discriminatory with respect to affecting CLEC's and SBC-13STATE's equipment. **SBC-13STATE** shall provide CLEC immediate notification by telephone of any emergency power activity that would impact CLEC Telecom Equipment.*

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Issue TDS-103: Should the insurance provisions be governed by the General Terms and Conditions?

(Appendix Collocation, Section 18)

A. Position of the parties.

Ameritech proposes insurance terms to cover collocation. Ameritech argues that these terms supplement the terms found in General Terms and Conditions to address particular risks involved in collocation.

TDS proposes to strike all of the language proposed by Ameritech arguing that the issues are adequately covered by General Terms and Conditions and that the language proposed by Ameritech is one-sided.

B. Decision.

Ameritech has failed to demonstrate that the provisions in section 18 of the Collocation Appendix address the "particular risks" involved in collocation other than to absolve Ameritech from liability to which it may be subject under the General Terms and Conditions portion of the interconnection agreement. The General Terms and Conditions cover property damage and even requires Fire Legal Liability sub-limits in the case of collocation.

The Panel strikes all of the language proposed by Ameritech in section 18 of the Collocation Appendix.

Issue TDS-107: Is TDS Metrocom entitled to charge reciprocal compensation for terminating FX calls?

(Reciprocal Compensation, Section 2.7)

A. Position of the parties.

Ameritech's position is that reciprocal compensation does not apply to foreign exchange (FX) calls because those calls do not originate and terminate in the same local calling area. TDS' position is that calls originating outside of the local exchange area that are provided with a local number corresponding to the local exchange area and transported into the local exchange area to be terminated within the local exchange area are, for the terminating company, indistinguishable from other local calls and the terminating company should be entitled to receive reciprocal compensation.

Apparently, this issue results from a misunderstanding between the parties. Ameritech does not dispute that the terminating carrier is entitled to reciprocal compensation in the scenario put forth by TDS. It does insist, however, that calls terminating at the location of the FX customer, outside the local calling area, are not subject to reciprocal compensation.

B. Decision.

The Panel adopts Ameritech's language, with the clarification that FX calls terminated within the local calling area are entitled to reciprocal compensation. It is the understanding of the Panel that the company that owns the foreign exchange (FX) customer recovers from that customer the cost of originating calls and of transporting them to the local exchange that owns the number. The originating party is then entitled to reciprocal compensation from the local exchange carrier (LEC) terminating the call. When the direction of the call is reversed, the originating company recovers the cost of originating the call from its local customer, while the

terminating company recovers the cost of transporting and terminating the call from its FX customer as part of the fee for FX service.

The Panel awards the following sentence, to be added to Appendix Reciprocal Compensation §2.7 as proposed by Ameritech:

> *Calls delivered to a receiving parting within a common mandatory local calling area that are delivered to the local calling area through FX are subject to local reciprocal compensation.*

Issue TDS-109: When Ameritech Wisconsin transits to TDS Metrocom traffic that originates on the network of a third party carrier that does not provide CPN, should Ameritech Wisconsin be required to pay that carrier's reciprocal compensation obligation to TDS Metrocom?

(Reciprocal Compensation, Section 3.5)

A. Position of the parties.

Ameritech's position is that it is only obligated to transit the traffic and to pass on to TDS the billing information that it receives from the originating carrier. TDS's position is that when the originating carrier does not provide adequate calling party number (CPN) information, Ameritech should pay the originating carrier's reciprocal compensation to TDS and recover the reciprocal compensation in turn from the originating carrier.

B. Decision.

The Panel is not convinced that the obligation of Ameritech to transit the traffic originating with a third party carrier to TDS carries with it the obligation to pay TDS for terminating the traffic. The Panel does agree that Ameritech should provide TDS with all of the calling party information that it has when transmitting traffic originating with a third party that terminates on TDS's network. If the originating carrier has SS7, then the appropriate

information will be available to TDS. If the originating carrier does not have SS7, Ameritech will provide TDS with the same information it uses to bill the originating carrier for transmitting the traffic. TDS will then be responsible for using this information to recover its terminating costs from the originating carrier.

The Panel awards that the final sentence in Appendix Reciprocal Compensation § 3.5 shall read as follows:

> *If traffic is delivered over other than transit trunk groups, and if the original and true CPN is not received from the originating third party, the Party performing the transiting function will pass on the same information it uses to bill the originating third party and will not be billed as the default originator.*

Issue TDS-111: Should TDS Metrocom bill Ameritech Wisconsin if Ameritech Wisconsin delivers transit traffic to TDS Metrocom without delivering the information TDS Metrocom needs to bill the third party?

(Reciprocal Compensation, Section 6.3)

For the reasons discussed in Issue TDS-109 above, the language proposed for § 6.3 will not be adopted.

Issue TDS-112: What process and rate should apply when Ameritech Wisconsin is the mandatory PTC?

(Reciprocal Compensation, Section 6.4)

A. Position of the parties.

The parties have reached an agreement that Ameritech should pay TDS a terminating switched access payment for the traffic that originates on the network of a third carrier and is delivered to TDS by Ameritech serving as the interconnecting toll carrier, so the dispute is over

the terminating switched access rate to apply. TDS proposes that it be paid at its tariffed access rate. Ameritech proposes that it pay TDS using Ameritech's tariffed access rates.

B. Decision.

During the course of the arbitration, the issue was raised about the ability of PSCW to establish interexchange access rates. The Panel determined that it was not necessary to resolve this issue in order to come to its decision, noting that the Commission would not have the authority to determine many of the other issues in this arbitration if those issues were raised outside of the context of the arbitration proceeding itself.

The Panel understands the general principle of the Telecommunications Act of 1996 that governs the creation of interconnection agreements to be that interconnection rates should be cost-based. While the access rates at issue here are not among those necessary for TDS to interconnect with Ameritech's network, the Panel believes that the use of cost-based rates is a sound economic principle to apply in this case. While it is not clear that either party's tariffed rates are based upon cost, the Panel recognizes that Ameritech's rates have at least been subjected to some review for reasonableness during their existence. TDS was not able to point out what its tariffed access rates are or what they are based upon. Ameritech also raised the same concern that TDS has raised elsewhere in this docket, the fact that there are no restrictions on the access rates TDS can charge and TDS has the ability to raise its tariffs at any time.

The Panel's decision is that TDS should charge Ameritech's tariffed rates for terminating access when Ameritech is the mandatory primary toll carrier until TDS is able to document its actual costs for terminating that toll traffic. TDS would be required to provide Ameritech with 30 days notice of a proposed change in its access tariffs and to provide Ameritech with the

opportunity to have its cost experts to inspect the documentation TDS used to justify its rates. If no record inspection is requested and performed, the rates go into effect. If Ameritech protests the rates after inspecting TDS's records, then the issue should be resolved through the dispute resolution process. The Panel does not intend to make Ameritech's rates serve as a cap on the rates charged by TDS.

Because TDS is serving the same geographic area as Ameritech, is able to be more selective in the customers it serves, and, in many cases is leasing UNEs to terminate the call, it stands to reason that TDS' costs for handling the toll call should be similar to Ameritech's costs. It is quite possible that TDS' costs may be lower given its ability to use the latest switching equipment and network configurations and to operate with fewer regulatory mandates.

However, TDS may not enjoy the same economics of scope and scale as Ameritech. To the extent that TDS can document that its costs to provide access services are higher than Ameritech, it is entitled to recover its costs. Once a rate is established, TDS must use that rate until it can document that its costs have changed and has submitted the new rates to the dispute resolution process.

The Panel awards the following language for Reciprocal Compensation § 6.4:

> *In those Ameritech States where Primary Toll Carrier (PTC) arrangements are mandated, for intraLATA Toll Traffic that is subject to a PTC arrangement and where Ameritech is the PTC, Ameritech shall deliver such intraLATA Toll Traffic to the terminating carrier in accordance with the terms and conditions of such PTC arrangement. Upon receipt of verifiable Primary Toll records, Ameritech shall reimburse the terminating carrier at Ameritech's applicable tariffed terminating switched access rates until the terminating carrier is able to document its costs for terminating intraLATA Toll Traffic. Once the terminating carrier provides tariffed rates based upon its documented costs, Ameritech shall reimburse the terminating carrier at the CLEC's applicable tariffed terminating switched access rates. When transport mileage cannot be determined, an average transit transport mileage shall be applied as set forth in Appendix Pricing.*

Issue TDS-119: What should be the compensation for termination of intercompany traffic for intrastate intraLATA toll service traffic?

(Reciprocal Compensation, Section 11.1)

A. Position of the parties.

The parties have agreed that this issue is essentially the same issue as Issue TDS-112 above, except that the traffic to which the rates apply is intrastate intraLATA toll service traffic and interstate intraLATA inter-company toll service traffic. The parties agree that access rates that will apply will be those of the terminating company, with the condition that Ameritech wants the terminating rates capped at the ILEC's tariff in the exchange area where the end user is located. TDS insists that there should be no cap on access rates.

B. Decision.

The same basic reasoning applies on this issue as with Issue TDS-112, but the award needs to be adapted to the circumstances that apply to both the termination and origination of intraLATA toll traffic. Either party may be selected to carry this toll traffic that originates with end users served by one party and terminates with end users served by the other party. Because this traffic can go on either party's network, the parties have agreed that the rates in their respective Intrastate Access Service Tariffs will apply to the traffic they carry. While Ameritech is not insisting that its access rates should apply to TDS, its concerns about TDS access rates are the same as those expressed in Issue TDS- 112 above. Its proposed solution is to limit the TDS access tariff to the compensation contained in the access tariffs of the ILEC in whose exchange the end user is located.

The Panel believes that its resolution of Issue TDS-112 above will also fit this dispute, but with the modification that if it desires, TDS should be able to charge its own access rates

where it serves end users that are located in exchange areas that are not served by Ameritech. The Panel recognizes that the costs for originating and terminating toll traffic in some of these exchanges may be higher than the cost to provide those services in Ameritech's local exchange territory. The complexities of using multiple rates may preclude TDS from making use of this option, but the opportunity is available. Once TDS has been able to document that its rates for originating and terminating toll services are based upon its costs to provide those services, the Panel anticipates that TDS will charge similar rates for all of its end users.

The Panel awards that Reciprocal Compensation Appendix § 11.1 shall read as follows:

> *For intrastate intraLATA toll service traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including Carrier Common Line (CCL) charge where applicable, as set forth in each party's Intrastate Access Service Tariff. This compensation is limited to the level of compensation contained in the ILEC's tariff in whose exchange area the End User is located until the party can document that its access tariffs are based upon the costs it incurs for providing the respective access services in the exchange area where the End User is located.*
>
> *For interstate intraLATA toll service traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including Carrier Common Line (CCL) charge where applicable, as set forth in each party's Intrastate Access Service Tariff. This compensation is limited to the level of compensation contained in the ILEC's tariff in whose exchange area the End User is located until the party can document that its access tariffs are based upon the costs it incurs for providing the respective access services in the exchange area where the End User is located.*

Docket 05-MA-123

Issue TDS-123: What limitations and liabilities should attach to TDS Metrocom for use of electronic interfaces?

(Appendix OSS, Section 3.2.1)

A. Position of the parties.

TDS proposes the following language for section 3.2.1 of Appendix OSS:

For **SBC-13STATE**, CLEC agrees to utilize **SBC-13STATE** electronic interfaces, as described herein, only for the purposes of establishing and maintaining Resale Services or UNEs through **SBC-13STATE**. In addition, CLEC agrees that such use will comply with the summary of **SBC-13STATE** 's Competitive Local Exchange Carrier Security Policies and Guidelines identified in section 9 of this Appendix.

Ameritech proposes the following alternative language:

Failure to comply with such security guidelines may result in forfeiture of electronic access to OSS functionality. In addition, CLEC shall be responsible for and indemnifies **SBC-13STATE** against any cost, expense or liability relating to any unauthorized entry or access into, or use or manipulation of **SBC-13STATE**'s OSS from CLEC systems, workstations or terminals or by CLEC employees or agents or any third party gaining access through information and/or facilities obtained from or utilized by CLEC and shall pay **SBC-13STATE** for any and all damages caused by such unauthorized entry.

B. Decision.

The Panel adopts the language proposed by TDS. There is no dispute about those two sentences.

The Panel defers the additional language proposed by Ameritech to docket 6720-TI-160. The issue of remedies in the event of a failure of the OSS system should be addressed in that docket. It is a generic question that the OSS proceeding should answer before implementing access.

The Panel awards the following language for section 3.2.1 of Appendix OSS:

*For **SBC-13STATE**, CLEC agrees to utilize **SBC-13STATE** electronic interfaces, as described herein, only for the purposes of establishing and maintaining Resale Services or UNEs through **SBC-13STATE**. In addition, CLEC agrees that such use will comply with the summary of **SBC-13STATE** 's Competitive Local Exchange Carrier Security Policies and Guidelines identified in section 9 of this Appendix.*

Issue TDS-124: Should TDS Metrocom be responsible for paying charges to Ameritech every time there is any inaccurate order?

(Appendix OSS, Section 3.4)

A. Position of the parties.

Ameritech proposes the following language for section 3.4 of Appendix OSS:

> By utilizing electronic interfaces to access OSS functions, CLEC agrees to perform accurate and correct ordering as it relates to the application of Resale rates and charges, subject to the terms of this Agreement and applicable tariffs dependent on region of operation. In addition, CLEC agrees to perform accurate and correct ordering as it relates to **SBC-13STATE**'s UNE rates and charges, dependent upon region of operation, pursuant to the terms of this Agreement. CLEC is also responsible for all actions of its employees using any of **SBC-13STATE**'s OSS systems. As such, CLEC agrees to accept and pay all reasonable costs or expenses, including labor costs, incurred by **SBC-13STATE** caused by any and all inaccurate ordering or usage of the OSS, if such costs are not already recovered through other charges assessed by **SBC-13STATE** to CLEC. In addition, CLEC agrees to indemnify and hold **SBC-13STATE** harmless against any claim made by an End User of CLEC or other third parties against **SBC-13STATE** caused by or related to CLEC's use of any **SBC-13STATE** OSS. In addition, **SBC-13STATE** retains the right to audit all activities by CLEC using any **SBC-13STATE** OSS. All such information obtained through an audit shall be deemed proprietary and shall be covered by the Parties Non-Disclosure Agreement signed prior to or in conjunction with the execution of this Agreement.

TDS objects to the fourth and fifth sentence of this section.

B. Decision.

Ameritech proposes that it should be paid for the work it performs on behalf of TDS. TDS objects, arguing that inaccurate orders placed by TDS should be regarded as part of the normal cost of doing business.

The Panel disagrees. When TDS submits a request to Ameritech to perform work on its behalf, TDS should pay for the work that is performed. If the work proves to be unnecessary, because the TDS request was inaccurate, TDS should compensate Ameritech for the work

nonetheless. Ameritech has no control over TDS staff preparation of service orders and other work requests, and therefore should bear no risk if the work is improperly done.

However, one source of inaccuracy may be that TDS must rely upon Ameritech information to prepare the order. Unnecessary work performed by Ameritech personnel because of an order based upon inaccurate Ameritech information would not be a reasonable expense for which Ameritech is entitled to recovery. TDS may amend the language awarded below to make this point clear in the contract.

Ameritech proposes that TDS indemnify it against any third-party claim arising from TDS' use of Ameritech's OSS systems. TDS agrees to indemnify Ameritech when it is at fault, as provided in the General Terms and Conditions. TDS does not agree to indemnify Ameritech it instances of simple negligence.

As discussed above, the Panel finds it is preferable to settle all of the terms and conditions related to OSS in docket 6720-TI-160. The Panel deletes the fifth proposed sentence, and use the indemnity provisions agreed to in the General Terms and Conditions. However, if the PSCW adopts Ameritech's language as an order point in the OSS proceeding, nothing in this award precludes enforcement of that order.

The Panel awards the following language for section 3.4 of Appendix OSS:

> *By utilizing electronic interfaces to access OSS functions, CLEC agrees to perform accurate and correct ordering as it relates to the application of Resale rates and charges, subject to the terms of this Agreement and applicable tariffs dependent on region of operation. In addition, CLEC agrees to perform accurate and correct ordering as it relates to* ***SBC-13STATE****'s UNE rates and charges, dependent upon region of operation, pursuant to the terms of this Agreement. CLEC is also responsible for all actions of its employees using any of* ***SBC-13STATE****'s OSS systems. As such, CLEC agrees to accept and pay all reasonable costs or expenses, including labor costs, incurred by* ***SBC-13STATE*** *caused by any and all inaccurate ordering or usage of the OSS, if such costs are*

*not already recovered through other charges assessed by **SBC-13STATE** to CLEC. In addition, **SBC-13STATE** retains the right to audit all activities by CLEC using any **SBC-13STATE** OSS. All such information obtained through an audit shall be deemed proprietary and shall be covered by the Parties Non-Disclosure Agreement signed prior to or in conjunction with the execution of this Agreement.*

Issue TDS-125: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix OSS, Section 3.11)

A. Position of the parties.

Ameritech proposes the following language for section 3.11 of Appendix OSS:

> CLEC is responsible for obtaining operating system software and hardware to access **SBC-13STATE** OSS functions as specified in: "Ameritech Electronic Service Order Guide", or any other documents or interface requirements subsequently generated by **SBC-13STATE** for any of its regions.

TDS proposes to delete the phrase, "… for any of its regions," and add the following phrase, "…provided that material changes shall be subject to Change Management," at the end of the section.

B. Decision.

This issue raises a question regarding the overlap between this proceeding and docket 6720-TI-160. The Panel understands that the Change Management Process was addressed as an issue in docket 6720-TI-160. The Panel is concerned that the award in this proceeding preserve the decision making process agreed to in docket 6720-TI-160. For that reason, the Panel awards the language proposed by TDS for section 3.11 of Appendix OSS:

CLEC is responsible for obtaining operating system software and hardware to access **SBC-13STATE** OSS functions as specified in: "Ameritech Electronic Service Order Guide", or any other documents or interface requirements subsequently generated by **SBC-13STATE,** provided that material changes shall be subject to Change Management.

Issue TDS-126: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix 800, Section 3.9)

A. Position of the parties.

Ameritech proposes the following language for section 3.9 of Appendix 800:

SBC-12STATE shall test the Access to the Toll Free Calling Database in conjunction with CCS/SS7 Interconnection Service (e.g., Appendix SS7) as outlined in Telcordia Technical References TR-NWT-000533, TR-NWT-000954, TR-TSV-000905, TP76638, GR-954-CORE, GR-905-CORE and Pacific Bell PUB L-780023-PB/NB and **SBC-AMERITECH** AM-TR-OAT-000069

TDS objects to the phrase, "…and Pacific Bell PUB L-780023-PB/NB and **SBC-AMERITECH** AM-TR-OAT-000069."

B. Decision.

For the reasons discussed in Issue TDS-20 above, the Panel awards the language proposed by Ameritech for this section.

Issue TDS-127: Should Section 3.12 be deleted since Section 3.10 clearly contemplates use of the toll-free database on behalf of other carriers?

(Appendix 800, Section 3.12)

A. Position of the parties.

Ameritech proposes the following language for section 3.12 of Appendix 800:

> **SBC-12STATE** shall provide Access to the Toll Free Calling Database as set forth in this Appendix only as such elements are used for CLEC's activities on behalf of its local service customers where **SBC-12STATE** is the incumbent local exchange carrier. CLEC agrees that any other use of **SBC-12STATE**'s Toll Free Calling Database for the provision of 800 database service by CLEC will be pursuant to the terms, conditions, rates, and charges of **SBC-12STATE**'s effective tariffs, as revised, for 800 database services.

TDS objects to the proposed language because it believes it is inconsistent with the language agreed to in section 3.10.

B. Decision.

The Panel finds the proposed language for section 3.12 is an accurate statement of how TDS should use and pay for the SBC-Ameritech Toll Free Calling Database. For this reason, the Panel awards the language as proposed by Ameritech. Section 3.10 should be interpreted so as not to interfere with the provision in section 3.12.

Issue TDS-129: Should Ameritech Wisconsin be permitted to seek indemnity against claims by third parties, including claims caused by Ameritech Wisconsin's own negligence?

(Appendix 911, Section 9.3)

A. Position of the parties.

Ameritech proposes the following language for section 9.3 of Appendix 911:

> CLEC agrees to release, indemnify, defend and hold harmless **SBC-13STATE** from any and all Loss arising out of **SBC-13STATE**'s provision of E911

> Service hereunder or out of CLEC's End Users' use of the E911 Service, whether suffered, made, instituted or asserted by CLEC, its End Users, or by any other parties or persons, for any personal injury or death of any person or persons, or for any loss, damage or destruction of any property, whether owned by CLEC, its End Users or others, unless the act or omission proximately causing the Loss constitutes gross negligence, recklessness or intentional misconduct of **SBC-13STATE**.

TDS objects to the phrase, "…, indemnify, defend and hold harmless," in the first sentence of this proposed section.

B. Decision.

Wis. Stat. § 146.70(7) provides:

> TELECOMMUNICATIONS UTILITY NOT LIABLE. A telecommunications utility shall not be liable to any person who uses an emergency number system created under this section.

Given this statute, it is not clear what the parties actually dispute in this issue. The parties agree that TDS itself will not bring a claim against Ameritech. The statute protects Ameritech from third party claims. To the extent that the disputed language requires TDS to defend Ameritech, it is unnecessary.

The Panel awards the language proposed by TDS:

> *CLEC agrees to release **SBC-13STATE** from any and all Loss arising out of **SBC-13STATE**'s provision of E911 Service hereunder or out of CLEC's End Users' use of the E911 Service, whether suffered, made, instituted or asserted by CLEC, its End Users, or by any other parties or persons, for any personal injury or death of any person or persons, or for any loss, damage or destruction of any property, whether owned by CLEC, its End Users or others, unless the act or omission proximately causing the Loss constitutes gross negligence, recklessness or intentional misconduct of **SBC-13STATE**.*

Issue TDS-130: Should Ameritech Wisconsin be permitted to seek indemnity against claims by third parties, including claims caused by Ameritech Wisconsin's own negligence?

(Appendix 911, Section 9.4)

A. Position of the parties.

Ameritech proposes the following language for section 9.4 of Appendix 911:

> CLEC also agrees to release, *indemnify, defend and hold harmless* **SBC-13STATE** from any and all Loss involving an allegation of the infringement or invasion of the right of privacy or confidentiality of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of the E911 Service features and the equipment associated therewith, including by not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing E911 Service provided hereunder, unless the act or omission proximately causing the Loss constitutes the gross negligence, recklessness or intentional misconduct of **SBC-13STATE**.

B. Decision.

As discussed in Issue TDS-129 above, Ameritech is adequately protected by the 911 statute in this state. The phrase, "…indemnify, defend and hold harmless," proposed by Ameritech in the first sentence is unnecessary. The Panel awards the language proposed by TDS.

Issue TDS-140: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix LIBD, Section 4.4)

A. Position of the parties.

Ameritech proposes the following language for section 4.4 of the Appendix LIBD:

> CLEC will make payment to **SBC-12STATE** for LIDB Service based upon the rates set forth in Appendix Pricing. All tariffed rates associated with LIDB Services provided hereunder are subject to change effective with any revisions of such tariffs.

TDS objects to the second sentence of this provision.

B. Decision.

This issue is similar to that discussed in Issue TDS-19 above. For the reasons discussed in that issue, the Panel finds is not appropriate to permit Ameritech to revise the rates and other terms of this Agreement unilaterally through a tariff revision. The Panel awards the following language for section 4.4:

> *CLEC will make payment to **SBC-12STATE** for LIDB Service based upon the rates set forth in Appendix Pricing.*

Issue TDS-144: How are orders over TELIS handled?

(Appendix NP, Section 3.4.7)

A. Position of the parties.

TDS proposes the following language for section 3.4.7 of Appendix NP:

> For EDI orders CLEC shall adhere to **SBC-12STATE**'s Local Service Request (LSR) format and PNP due date intervals. For orders placed over Telis, Ameritech will provide for an ASR format that integrates PNP ordering.

Ameritech would eliminate the qualifying language in the first sentence, "For EDI orders," and would delete the second sentence altogether. Ameritech asserts that the TELIS system is scheduled for retirement and it would be imprudent to include language in the Agreement to upgrade that ordering interface.

B. Decision.

The Panel finds that TDS has a valid concern regarding the management of the Ameritech ordering interface. In its discussion of a planned upgrade to the interface, Ameritech essentially concedes that the current TELIS is inadequate. The Panel agrees that any upgrade Ameritech installs should serve the needs of all interconnecting CLECs. However, in the interim, the Panel believes Ameritech should address the inadequacies of the existing interface.

The Panel awards the following language for section 3.4.7 of Appendix NP:

> *For EDI orders CLEC shall adhere to **SBC-12STATE**'s Local Service Request (LSR) format and PNP due date intervals. Until such time that Ameritech elects to replace or upgrade TELIS, Ameritech will provide for an ASR format that integrates PNP ordering for any orders placed over TELIS.*

Issue TDS-149: Should due date intervals be included in agreement?

(Appendix NP, Section 5.4.1)

A. Position of the parties.

Ameritech proposes the following language for section 5.4.1 of Appendix NP:

> CLEC shall agree to adhere to **SBC-12STATE** LSR format and mass calling due date intervals as set out in the Ameritech Trunking Interval Guide.

TDS objects to the reference to the Ameritech Trunking Interval Guide.

B. Decision.

For the reasons discussed in Issue TDS-20 above, the Panel awards the language proposed by Ameritech for this issue.

Docket 05-MA-123

Issue TDS-153: Should TDS Metrocom be required to use Ameritech Wisconsin for all operator services, or may it contract with another provider upon reasonable notice to Ameritech Wisconsin of a change in service level?

(Appendix OS, Section 8.1)

A. Position of the parties.

Appendix OS contains the agreed upon terms for Ameritech to provide operator services to TDS for the term of this agreement. Ameritech's position is that it will incur sunk costs to provide operator services to TDS and will need a notice of at least one year in order to recover those costs. TDS' position is that operator services is a competitive service and it is not obligated to purchase operator services from Ameritech. For this reason, TDS should be able to switch to another provider if it so desires after providing a reasonable notice to Ameritech.

B. Decision.

The Panel agrees that operator service is a competitive service and should be provided at terms and rates negotiated in the open market. There is no evidence that TDS has been coerced into obtaining operator service from Ameritech or that Ameritech is obligated to provide operator service to TDS. With this understanding, the Panel is reluctant to intervene over a dispute over the terms of the operator service appendix. The Panel has no special insight into the nature of operator service contracts or the types of terms and conditions that apply.

It seems reasonable to the Panel that the parties should be able to negotiate the length of the contract and the terms for discontinuing on a level playing field. It also seems reasonable that Ameritech would be willing to provide operator service at a lower rate in return for a firm long-term commitment of a year or for more than a year.

Given that the proposed agreement does not contain any term requirement, or any implication that the parties had a contract length in mind when the terms were negotiated, the Panel is left to determine what a reasonable notice period for termination should be.

The Panel concludes that TDS' proposal for a six-month notice should provide Ameritech with sufficient time to adjust to the loss of TDS' business, to negotiate other terms, or to contract with another CLEC if that option presents itself.

The Panel awards that Appendix OS §8.1 shall read as follows:

> *TDS will provide Ameritech with at least 6 months notice prior to any significant change in service levels for OS under this appendix.*

Issue TDS-155: Should TDS Metrocom be permitted to terminate this appendix so that it may obtain services from another provider upon reasonable notice to Ameritech Wisconsin?

(Appendix OS, Section 13.2)

A. Position of the parties.

See Issue TDS-153 above.

B. Decision.

For the reasons stated in Issue TDS-153, the language proposed by Ameritech for section 13.2 is not adopted.

Issue TDS-156: Should this section be amended to include additional toll message types?

(Appendix Recording, Section 3.1)

A. Position of the parties.

Ameritech's position is that Appendix Recording only addresses interexchange carrier transport and should not include other types of transport because either it does not have access to the types of records requested by TDS or it already provides the information requested in a different format. TDS's position is that the records it requests are not different from the information Ameritech records for interexchange carrier traffic and Ameritech should provide it. It appears that the parties may not have been addressing the same issue in their negotiations because Ameritech is concerned about recording traffic it is transiting and TDS is concerned about billing records for toll traffic that originates from customers of Ameritech.

B. Decision.

The Panel finds that it is reasonable for Ameritech to record all interexchange carrier (IXC) transmitted messages and all toll traffic that originates from Ameritech's own customers in Feature Group D (FGD) format and provide that information to TDS. For traffic where Ameritech is the Primary Toll Carrier transiting traffic that comes from the network of a secondary carrier, Ameritech will provide to TDS the billing information that it receives from the secondary carrier but will not be required to record that information in FGD format for TDS.

It appears to the Panel that this arrangement will meet the needs of TDS while addressing Ameritech's position that when it is merely transmitting the traffic, it is not in a position to record it. In this situation, Ameritech receives a record of the toll traffic from the secondary carrier, apparently in Feature Group C (FGC) format and uses this information to bill the

secondary carrier. Ameritech points out that it is currently passing on to TDS the FGC records it receives from the secondary toll provider and that this arrangement has been satisfactory for both parties.

The Panel awards that the first sentence of Appendix Recording § 3.1 will read as follows:

> *Ameritech will record all IXC transported messages for TDS, including toll messages that originate with Ameritech, carried over all Feature Group Switched Access Services that are available to Ameritech provided recording equipment or operators.*

Issue TDS-157: Should the Access Usage Records include PTC IntraLATA toll traffic?

(Appendix Recording, Section 3.3)

A. Position of the parties.

See Issue TDS-156 above.

B. Decision.

Section 3.3 will read as follows:

> *Ameritech will provide Access Usage Records that are generated by Ameritech. Such records will include interLATA toll traffic that originates on Ameritech's network. Ameritech will also provide to TDS all Access Usage Records that it receives from secondary toll carriers for the intraLATA toll traffic that it receives from those carriers and transits to TDS.*

Docket 05-MA-123

Issue TDS-158: Must CLEC provide a portion of signaling links?

(Appendix SS7, Section 2.5)

A. Position of the parties.

Ameritech's position is that Signaling System Seven (SS7) is not an interconnection trunk or an ancillary service and is not a service it is required to provide, so the language of Appendix NIM § 3.4.2 does not allow TDS to provide SS7 over joint SONET. TDS's position is that because SS7 is currently being provisioned over joint SONET, it qualifies as an ancillary service and therefore may be provided over joint SONET under Appendix NIM § 3.4.2 .

B. Decision.

Both parties agree that SS7 is not an interconnection trunk, and Ameritech maintains that because SS7 is not listed among the ancillary services included in ITR § 5, it may not be provided over joint SONET. TDS's argument that SS7 was meant to be included among the ancillary services listed in ITR§ 5 because SS7 is currently being provided over joint SONET carries some merit, but the Panel is not persuaded that current practices by the parties should be included in the contract by inference. It appears to the Panel that this is another area where the parties' current practices are acceptable to both sides, but that Ameritech does not want to be contractually bound to these practices. Ameritech's concern may be about avoiding the FCC's pick and choose rule, given the fact some SS7 links need to travel long distances in order to obtain the necessary redundancy.

The Panel acknowledges TDS' concern that it expected the current provisioning arrangements for signaling links to continue given the fact that Ameritech has voluntarily been willing to allow provisioning of SS7 over joint fiber. The Panel is reluctant to make this a requirement of the interconnection agreement, but is willing to substitute for TDS' language its

own language acknowledging that signaling links that the parties are currently using are not prohibited by Appendix NIM §3.4.2.

The Panel awards that Appendix SS7 §2.5 shall read as follows:

The CLEC shall provide the portion of the signaling link from the CLEC premises within the LATA to the Ameritech STP location or the CLEC SPOI. This signaling link may be provided using existing arrangements for providing SS7 between the parties. CLEC shall identify the DS1 or channel of a DS1 that will be used for the signaling link.

Issue TDS-159: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix SS7, Section 2.8)

A. Position of the parties.

Ameritech proposes the following language for section 2.8 of Appendix SS7:

Dedicated Signaling Links are subject to **SBC-12STATE** compatibility testing and certification requirements pursuant to the Network Operations Forum Reference Document, GR-905-CORE and **SBC-12STATE** Technical Publication, TP76638. In the **SBC-AMERITECH** Technical Publication AM-TR-OAT-000069 will apply in addition to the documents referenced above. In **SBC-2STATE** PUB L-780023-**SBC-2STATE** may be substituted for TP76638 and first interconnections to **PACIFIC**'s signaling network per CLEC and per signaling point type of equipment will require completion of **PACIFIC**'s CCS/SS7 interconnection questionnaire. Each individual set of links from CLEC switch to **SBC-12STATE** STP will require a pre ordering meeting to exchange information and schedule testing for certification by **SBC-12STATE.**

TDS objects to references to SBC-Ameritech publications. TDS proposes to delete the following language: "… and **SBC-12STATE** Technical Publication, TP76638. In the **SBC-AMERITECH** Technical Publication AM-TR-OAT-000069 will apply in addition to the documents referenced above. In **SBC-2STATE** PUB L-780023-**SBC-2STATE** may be substituted for TP76638 and first interconnections to **PACIFIC**'s signaling network per CLEC

and per signaling point type of equipment will require completion of **PACIFIC**'s CCS/SS7 interconnection questionnaire."

B. Decision.

For the reasons discussed in Issue TDS-20 above, the Panel awards the language proposed by Ameritech. The Panel finds that, on balance, the risk that Ameritech would use a reference to an internal document related to the operation of the signaling network to the disadvantage of TDS is small. The SBC-Ameritech signaling network is of necessity integrated into the operation of the signaling network nationally. In this circumstance, a requirement that Ameritech obtain approval from TDS before implementing a revision to its SS7 publications adds an unnecessary layer of process.

The Panel awards the language Ameritech has proposed for this section.

Issue TDS-160: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix SS7, Section 3.4.8)

A. Position of the parties.

Ameritech proposes the following language for section 3.4.8 of Appendix SS7:

Provisioning of the SS7 Service is in accordance with ***SBC-AMERITECH*** *AM-TR-OAT-000069 and* GR-905-CORE, as amended.

B. Decision.

For the reasons discussed in Issue TDS-159 above, the Panel awards the language proposed by Ameritech for this issue.

Issue TDS-163: Should TDS Metrocom be limited to providing resale services only according to Ameritech Wisconsin retail tariffs, and rules for resale?

(Appendix Resale, Section 3.1)

A. Position of the parties.

Ameritech's position is that when it makes its retail services available at wholesale discounts for resale, the retail services come as defined in its tariffs. If CLECs use them in a manner not provided for in its tariffs, by definition, they are not reselling but are purchasing a different service from Ameritech. TDS's position is that Ameritech is not permitted by the FCC's rules to place restrictions on resale because the rules contain a presumption that all resale restrictions are unreasonable.

B. Decision.

It is the Panel's understanding of resale that it involves the purchase by a CLEC of a service offered to an ILEC's retail customer at a discounted price with the ability to resell that service to the CLEC's own customers. The language proposed by Ameritech emphasizes that, except for prohibitions on resale itself, the same tariffed restrictions on what Ameritech's retail customer are allowed to do with the service will apply to what TDS or its retail customers can do. This does not appear to be a restriction on resale as much as a provision specifying what resale means. The Panel agrees with Ameritech's point that if TDS were to purchase a service that Ameritech provides to its retail customers but is not bound by the same terms that Ameritech imposes on its retail customers, it would be purchasing a different service than the one Ameritech offers through its retail tariffs. The Panel also expects Ameritech's tariffs to be in compliance with Commission and FCC rules governing the resale obligation for retail services and any tariff provision that is not in compliance to be unenforceable.

The Panel awards the language proposed by Ameritech for Appendix Resale §3.1.

Issue TDS-167: Should there be penalties for violation of agreement?

(Appendix Resale, Section 3.12)

A. Position of the parties.

Ameritech's position is that by including its proposed language for remedies for breach of the resale agreement, the parties will be able to avoid the cost and expense of invoking the dispute resolution process and reconciling disputes over damages. It also maintains that its proposed remedies are reasonable and will make the cost of violating the agreement clear and will mitigate incentives for violations. TDS's position is that Ameritech's proposed remedies are not reasonable and amount to liquidated damages, which must be voluntarily agreed to by both parties.

B. Decision.

While the Panel does not disagree that the language is reasonable, it is not comfortable mandating that the specific remedy be applied. Under the language, if TDS disputes the remedies, the dispute will still be handled under the dispute resolution provisions of the agreement. The Panel expects both parties to act reasonably and not invoke the dispute resolution process if possible. If Ameritech's proposed correction to the violation is reasonable, the Panel would expect TDS to agree to that remedy instead of invoking the dispute resolution process.

The Panel directs the parties to delete the language proposed by Ameritech from Appendix Resale §3.12

Issue TDS-168: Should Non-Standard Service contracts be discounted?

(Appendix Resale, Sections 3.15.2.3-3.15.2.4)

A. Position of the parties.

Ameritech's position is that it is not clear that the FCC's rules require that these contracts can be assumed, but if they can, the standard wholesale discount would not apply because it has to negotiate each contract separately and will not have avoided most of the costs that are assumed to be avoided when tariffed retail services are provided wholesale to CLECs. TDS's position is that the FCC's rules do not make exceptions for Individual Case Basis (ICB) contracts and that all services that are provided by Ameritech to retail customers must be offered to TDS at wholesale rates, with the standard wholesale discount applied.

B. Decision.

While Ameritech is not willing to concede that the FCC's rules require it to offer ICB contracts for resale, it is willing to provide the contracts specified in this section for resale. The issue thus becomes what, if any, wholesale discount to apply. Ameritech insists that the standard wholesale discount that applies to services sold at tariffed rates should not be applied to ICB contracts because this would violate the avoided costs standard. Ameritech also recommends that no discount should be applied because the only costs that would be avoided are the cost for billing and collection, which are minimal for individual contracts.

The FCC did not exempt ICB contracts from resale obligations, but was willing to let the incumbent provider make a case that avoided costs are lower when selling in large volumes to a single retail customer. The Panel agrees that the standard wholesale discount probably will not be a good estimate of the costs that will be avoided by making ICB contracts available for resale. It is the Panel's understanding that the resale formula deducts from the cost of the retail service

the costs that Ameritech would avoid if the retail service were sold on a wholesale basis. It agrees with Ameritech that many of the costs avoided with the wholesale provisioning of tariffed services cannot be avoided when the service is offered individually.

As a general rule, contracts are offered individually when customers put their requirements out for bid, if special construction charges apply or if the ILEC is willing to reduce rates for a commitment to purchase large volumes over an extended period of time because such contracts are less expensive to serve than is the typical customer for which its tariffs were designed. These contracts incur extra costs to price and negotiate that cannot be avoided through resale.

The Panel believes that the prices charged should reflect, as much as possible, the avoided cost on each contract. This may not be practical, but the Panel suspects that the parties will be able to develop a reasonable approximation for each type of contract after a little experience.

C. Award

The contract language proposed by Ameritech for the Appendix resale §3.15.2.3 and for § 3.15.2.4 is adopted, except that the words after the last comma in each section shall read:

> … *but the wholesale discount that applies will be based upon the avoided costs for each contract and the standard wholesale discount does not apply.*

Docket 05-MA-123

Issue TDS-176: When should TDS Metrocom resold services be branded?

(Appendix Resale, Section 5.2.1)

A. Position of the parties.

Ameritech insists that the branding obligations should not apply to situations where it is not technically feasible for it to provide branding. TDS believes that it is currently technically feasible for Ameritech to provide branding services, so there is no need to include an exception that will allow Ameritech to avoid its branding obligations.

B. Decision.

The Panel agrees to adopt the Ameritech language. It appears that the only dispute between these parties is one of trust or credibility. The parties agree that Ameritech will provide branding for resold services that include operator services and directory assistance. They also agree that it is currently technically feasible for Ameritech to provide branding. Ameritech argues that something may happen in the future that could make branding technically infeasible. TDS believes that the only thing that would make branding technically infeasible is a "force majeure" situation covered elsewhere in the contract. Both parties may be correct. The Panel is willing to leave the technical feasibility language in because it expects that it will be very difficult for Ameritech to establish that at some time in the future branding is no longer technically feasible.

The Panel awards contract language for Appendix Resale § 5.2.1 as proposed by Ameritech.

Issue TDS-177: When should TDS Metrocom resold services be branded?

(Appendix Resale, Section 5.3.1.3)

A. Position of the parties.

See Issue TDS-176 above.

B. Decision.

Appendix Resale section 5.3.1.3 will read as drafted by Ameritech.

Issue TDS-179: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix Resale, Section 7.2.1)

A. Position of the parties.

Ameritech proposes the following language for section 7.2.1 of Appendix Resale:

> Methods and procedures for ordering are outlined in the CLEC Handbook, available on-line, *as amended by* ***SBC-13STATE*** *in its sole discretion from time to time*. All Parties agree to abide by the procedures contained therein.

TDS objects to the phrase, "…as amended by **SBC-13STATE** in its sole discretion from time to time." TDS would also add the following sentence to this section: "Changes to the CLEC Handbook shall be made only according to the agreed Change Management Process."

B. Decision.

As discussed in Issue TDS-125 above, this issue again raises a question regarding the overlap between this proceeding and docket 6720-TI-160. The Panel understands that both the CLEC Handbook and the Change Management Process are addressed as issues in docket 6720-TI-160. The

Panel finds that the language proposed by TDS better preserves the decision making process agreed to in that proceeding.

The Panel awards the following language for section 7.2.1 of Appendix Resale:

Methods and procedures for ordering are outlined in the CLEC Handbook, available on-line. All Parties agree to abide by the procedures contained therein. Changes to the CLEC Handbook shall be made only according to the agreed Change Management Process.

Issue TDS-180: Should Ameritech Wisconsin be entitled to unilaterally alter the rights and responsibilities of the parties under this agreement by making such rights and responsibilities controlled by Ameritech Wisconsin internal documents that Ameritech Wisconsin can change at its sole discretion, without notice to or agreement by TDS Metrocom?

(Appendix Resale, Section 7.3.1)

A. Position of the parties.

See Issue TDS-179 above.

B. Decision.

For the reasons discussed in Issues TDS-20 and TDS-179 above, the Panel awards the language proposed by TDS.

Issue AIT-4: Should the agreement require Ameritech Wisconsin to provide the daily usage file to TDS Metrocom for free?

(Appendix Resale, Section 7.4)

A. Position of the parties.

Ameritech believes that it should be able to charge for this service if it wants to, although it currently does not charge TDS for the Daily Usage File (DUF). TDS believes that the cost of

providing the DUF is included in the tariffed retail rates and therefore Ameritech should not be able to charge a fee for providing it to TDS.

B. Decision.

The Panel is somewhat baffled by this issue. Ameritech is currently providing the DUF information to TDS for free, and it apparently is not necessarily concerned about being paid for the information. Ameritech's concern appears to be that the contract not "require" Ameritech to provide it for free. Ameritech maintains that there is a cost, but provided no testimony about how substantial that cost is. TDS concedes that there is a cost associated with providing the DUF, but insists either that it is very small because Ameritech would be preparing the file for its own use anyway, and/or that the costs are already included in the wholesale price.

The Panel is persuaded, by the fact that the information is currently being provided for free, that it does not create a noticeable cost to Ameritech to deliver the file to TDS. The Panel does not read the agreed-to language as requiring that Ameritech deliver the information for free because there is no charge mentioned. To the extent that Ameritech is concerned whether other CLECs could adopt the same language under Rule 51.809, it is not obvious to the Panel that other parties that do not already have a CLEC relationship with Ameritech similar to the one TDS has could use the agreed-to language of § 7.4 to require Ameritech to provide the DUF for free.

The Panel directs the parties to delete the last sentence proposed by Ameritech for Appendix Resale §7.4.

Docket 05-MA-123

Issue TDS-183: Who should investigate allegations of unauthorized switching?

(Appendix Resale, Section 8.4)

A. Position of the parties.

Ameritech's position is that the issue of payment will only come up if an investigation requested by a CLEC is so unusual that FCC or Commission rules and practices do not otherwise cover it. TDS's position is that each party is required to cooperate in any investigation of alleged slamming and neither party should be required to reimburse the other party for its costs.

B. Decision.

TDS objected to the proposed language because it implied that even though both parties were cooperating to investigate allegations of slamming, TDS would be required to pay Ameritech for its cooperation. On the other hand, Ameritech claims that its language is intended to cover circumstances where TDS requests Ameritech to conduct an investigation that it would not otherwise be expected to conduct.

The Panel agrees that TDS should pay Ameritech if the investigation is at TDS's request and exceeds the type of cooperation and effort Ameritech is otherwise obligated to undertake. The Panel believes that this position is not clear in the language proposed by Ameritech and modifies it to make explicit the qualification on Ameritech's ability to charge for investigating a slamming complaint.

C. Award

Appendix Resale § 8.4 shall read as agreed by the parties, with the following sentence added in place of the one proposed by Ameritech:

> *If TDS makes a request that Ameritech undertake an investigation of an alleged incidence of slamming, and if such request is outside the scope of the investigation that Ameritech is required to conduct in compliance with any FCC or Commission regulation mentioned*

above, then Ameritech may charge TDS an investigation fee as set forth in Appendix Pricing in the "OTHER (Resale)" category, listed as "Slamming Investigation Fee."

Issue TDS-190: Should Ameritech Wisconsin be obligated to provision xDSL capable loops in instances where physical facilities do not exist?

(Appendix DSL, Section 4.6)

A. Position of the parties.

Ameritech proposes the following language for section 4.6 of Appendix DSL:

*This Agreement neither imposes on **SBC-12STATE** an obligation to provision xDSL capable loops in any instance where physical facilities do not exist nor relieves **SBC-12STATE** of any obligation that **SBC-12STATE** may have outside this Agreement to provision such loops in such instance*. **SBC-12STATE** shall be under no obligation to provide HFPL where **SBC-12STATE** is not the existing retail provider of the traditional, analog voice service (POTS). This shall not apply where physical facilities exist, but conditioning is required. In that event, CLEC will be given the opportunity to evaluate the parameters of the xDSL or HFPL service to be provided, and determine whether and what type of conditioning should be performed. CLEC shall pay **SBC-12STATE** for conditioning performed at CLEC's request pursuant to Sections 7.1 and 7.2 below.

TDS objects to the first sentence of this proposed language.

B. Decision.

For the reasons discussed in Issue TDS-28 above, the Panel awards the language as proposed by Ameritech. To the extent that the FMOD Policy adopted in docket 6720-TI-160 requires construction or installation in addition to that required by this Agreement, the Award in this proceeding does not relieve Ameritech from any obligation Ameritech has undertaken or is bound by in docket 6720-TI-160.

Issue TDS-196: What should Acceptance Testing include?

(Appendix DSL, Section 8.2)

A. Position of the parties.

Ameritech proposes the following language for section 8.2 of Appendix DSL:

> Should the CLEC desire Acceptance Testing, it shall request such testing on a per xDSL loop basis upon issuance of the Local Service Request (LSR). Acceptance Testing will be conducted at the time of installation of the service request. All loops shall be tested to verify basic loop metallic parameters, continuity or pair balance.

TDS proposes to word the final sentence of the section as follows:

> All loops shall be tested to verify the absence of load coils, excessive bridge taps, foreign voltage, grounds or other elements that make the loop unsuitable.

B. Decision.

The purpose of the Acceptance Test is to verify that a loop is ready for service. Ameritech objects to verification of conditioning as part of this test. Ameritech intends to provide that verification by another procedure.

The Panel finds that the TDS language better expresses the work that should be performed to determine that a loop is ready for service. If the Acceptance Testing merely confirms an earlier report that line conditioning has been performed, the confirmation can be provided at little cost to either party.

The Panel awards the language proposed by TDS for this section.

Issue TDS-197: Should Ameritech Wisconsin be relieved of obligation to perform acceptance testing?

(Appendix DSL, Section 8.3.5)

A. Position of the parties.

Ameritech proposes the following language for section 8.3.5 of Appendix DSL:

> **SBC-12STATE** will be relieved of the obligation to perform Acceptance Testing on a particular loop and will assume acceptance of the loop by the CLEC when the CLEC cannot provide a "live" representative (through no answer or placement on hold) for over ten (10) minutes. **SBC-12STATE** may then close the order utilizing existing procedures, document the time and reason, and may bill the CLEC as if the Acceptance Test had been completed and the loop accepted, subject to Section 8.4 below.

B. Decision.

TDS points out that Ameritech is unwilling to agree to a response interval of 10 minutes for service requirements that Ameritech is responsible for. The Panel agrees that this interval should apply reciprocally, or not at all. Since Ameritech does not agree to a reciprocal application of this proposed provision, the Panel directs the parties to delete the language from the Agreement.

Issue TDS-201: What should Ameritech Wisconsin repair at no charge to TDS Metrocom?

(Appendix DSL, Section 9.4)

A. Position of the parties.

Ameritech proposes the following language for section 9.4 of Appendix DSL:

> Maintenance, other than assuring loop continuity and balance on unconditioned or partially conditioned loops greater than 12,000 feet, will only be provided on a time and material basis. On loops where CLEC has requested recommended conditioning not be performed, **SBC-12STATE**'s maintenance will be limited to verifying loop suitability for POTS. For loops having had partial or extensive conditioning performed at CLEC's request, **SBC-12STATE** will verify continuity, the completion of all requested

> conditioning, and will repair at no charge to CLEC any defects which would be unacceptable for POTS and which do not result from the loop's modified design, [and] conditioning. For loops under 12,000 feet, **SBC-12STATE** will remove load coils, repeaters and excessive bridge tap at no charge.
>
> TDS would word the third sentence of this section as follows:
>
> For loops having had partial or extensive conditioning performed at CLEC's request, **SBC-12STATE** will verify continuity, the completion of all requested conditioning, and will repair at no charge to CLEC any defects which would be unacceptable for POTS or which result from conditioning or other work performed by SBC-12STATE.

B. Decision.

The language proposed by TDS is a straight forward statement of what is expected from Ameritech. The Panel awards the language proposed by TDS.

Issue TDS-206: What efforts should Ameritech Wisconsin make concerning the availability of Ameritech Structure for TDS Metrocom's Attachments?

(Appendix ROW, Section 2.1.2)

A. Position of the parties.

Ameritech's position is that TDS has already agreed to negotiate its own contracts for access to Ameritech's structures, so the proposed language is not necessary and will impose on Ameritech a requirement to negotiate access issues on behalf of TDS. TDS's position is that the requested language only obligates Ameritech to make a reasonable effort to make sure its own contracts do not contain any language that restricts access by TDS and does not obligate Ameritech to negotiate contracts on behalf of TDS.

B. Decision.

Once again the parties basically agree that, at the current time, there are no known problems or concerns in this area. However, TDS is concerned that Ameritech will change its

practice in the future and make it more difficult for TDS to access Ameritech's structures. This may be another situation where Ameritech's concern is more with the potential impact of the ability of other CLECs to adopt this provision for their own contracts than it is about TDS's actions. The Panel believes that to the extent that TDS's concern is legitimate, the proposed language will address the problem without imposing any unnecessary obligation on Ameritech to negotiate on behalf of TDS, or any other CLEC.

C. Award.

The last sentence in Appendix ROW §2.1.2 shall read as follows:

If there are any agreements between Ameritech and property owners or government agencies that include restrictions or impediments to TDS obtaining access to structures used by Ameritech, Ameritech shall make all reasonable efforts to modify those agreements to remove the restrictions or impediments.

Issue TDS-212: How much should the unauthorized attachment fee be if TDS Metrocom places attachments without a permit?

(Appendix ROW, Section 11.5)

A. Position of the parties.

Ameritech's position is that it will require a fee equal to five times the annual attachment fee to provide a sufficient penalty to discourage CLECs from making unauthorized attachments. TDS maintains that a sufficient fee would be 1.5 times the annual attachment fee, and that a fee as large as Ameritech proposes would reimburse Ameritech for damages well in excess of any harm that it incurs.

B. Decision.

The Panel decision is to essentially split the difference and set a fee of three (3) times the annual attachment fee. The Panel could find no persuasive rationale for either five (5) times the

annual fee or 1.5 times. At first glance, five times seems like a fairly punitive number until one recognizes that the annual fee is only about three dollars ($3.00), so it would take a significant number of unauthorized attachments to impose a burden upon the CLEC. One and one half (1.5) times three dollars is not much of an incentive to encourage TDS to follow proper procedures. The five times figure appears to be the maximum suggested by the FCC, but there is little other justification for that number provided by Ameritech. Without more information on which to base its decision, it is reasonable to split the difference.

C. Award.

The disputed language in Appendix ROW § 11.5 shall be replaced by the words, "three (3) times."

Issue TDS-215: What notification period and charges should apply for Extraordinary Attachments?

(Appendix ROW, Section 14.1)

A. Position of the parties.

Ameritech objects to the short five day notice period and to the implication that TDS would be obligated to pay for extraordinary attachments against its will. TDS's concern is that the mere request for the attachment will result in a fee even if it does not want to pay for an extraordinary attachment.

B. Decision.

The primary dispute seems to be about the notice period since Ameritech maintains that TDS will always have the ability to decline to make the attachment after it discovers what the fee will be. There was little evidence provided about the length of the notice period other than that

TDS requested five days and the FCC allows 45 days to respond to structure requests. Ameritech maintains that five days is unreasonable because the evaluation of requests for attachments can sometimes be quite complex. The Panel agrees with Ameritech. The Panel is also persuaded by Ameritech's discussion that at no time will TDS be required to pay for an extraordinary attachment that it decides it does not want. However, the Panel can see no harm in making this point explicit in the contract.

The Panel awards that the last sentence in Appendix ROW § 14.1 shall read as follows:

If Ameritech considers an attachment to be an extraordinary attachment, Ameritech will give TDS notice thereof within a reasonable time, not to exceed 45 days, after receiving the access request for the attachment. TDS shall be permitted to respond, and no changes may be assessed unless TDS agrees to use the attachment.

Issue TDS-217: Should the rates and terms of pricing be based on the outcome of the UNE pricing docket, retroactive to the effective date of this Agreement?

(Appendix WI Pricing, Section 1.6)

A. Position of the parties.

Ameritech's position is that because the rates it now charges are Commission approved and presumptively reasonable, there is no basis for making the rates that result from the UNE pricing docket retroactive to the date that this contract becomes effective. TDS anticipates that it will receive lower rates as a result of the UNE pricing docket and wants those rates applied retroactively.

B. Decision.

There is little evidence on the record to justify the language proposed by TDS, other than a gamble on TDS' part that rates for Ameritech's UNEs can only go down. The Panel is not as

convinced as TDS is that rates can only go down, noting that Ameritech has requested substantial increase in many of its UNE rates. Even if the Panel were confident that subsequent rates will decrease, it is not persuaded that this fact would justify the uncertainty and administrative problems created by making the rates retroactive to the date of the contract.

C. Award.

Appendix Pricing § 1.6 shall include only the language that has been agreed to by the parties.

Issue TDS-219: Should FX and FGA appendices be a part of this agreement?

(Appendices FX and FGA)

A. Position of the parties.

Ameritech proposes to include two appendices related to Foreign Exchange (FX) and Feature Group A (FGA) service. TDS objects to the inclusion of these appendices because it does not intend to order any FX or FGA service.

B. Decision.

Ameritech proposes to include the two appendices to address a contingency. If TDS decides to offer services that require reference to these two appendices, they will be in place and available.

The Panel does not believe TDS can be harmed by including the appendices for this purpose. The Panel awards this language as proposed by Ameritech

Award

1. For each issue discussed in the Opinion above, the Panel awards the contract language specified for that issue. Where the Panel has adopted specific contract language, the parties shall incorporate that language into the Interconnection Agreements. Where the Panel has adopted a position on an issue and provided drafting instructions for the parties, the parties shall compose contract language to implement the Panel's award.

2. Any issues not specifically addressed are rejected.

3. Nothing in this Award or the subsequent Interconnection Agreement precludes either or both parties from purchasing under tariffs which are separately filed by either party and not intended to implement this Award or Agreement.

4. The parties to this arbitration continue to be bound by all Wisconsin state statutes and administrative rules, including service quality standards, regardless of their contractual arrangements or the result of this arbitration proceeding.

5. The parties shall jointly a final Interconnection Agreement to the Panel by noon, April 27, 2001. If the parties are unable to conclude a final agreement, the parties may submit alternative proposed contract language for any disputed provision, and the Panel will decide which alternative best implements the terms of this Arbitration Award.

By the Panel,

Signed this 12th day of March, 2001.

Dennis J. Klaila, Chair	Duane Wilson	Chela O'Connor

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